90-1209

(1)

Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

JOYCE BALZER,

Petitioner

versus

DONALD MEIER, JAMES BOOK,
K-B FARMS, INC., AND ROBERT H. FRIEL

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES SUPREME COURT

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# PETITION FOR WRIT OF CERTIORARI

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61107

## QUESTIONS PRESENTED

I. A) Whether denial of a Trial by Jury violates plaintiff's fundamental rights in Civil Trials which involves absence of required permits for illegal rechannelization and personal gain by public official and other adjacent landowners; B) Whether plaintiff's First Amendment Rights to Freedoms made applicable to the States through Due Process Clause of 14th Amendment are being violated, namely, Property Rights and Freedom of Expression Rights; specifically, Right to Protected Speech, Right to Assemble, and C) The Right of Parent(s) to choose children's environment free from interference under the Fourteenth Amendment.

II. Whether plaintiff's property rights as a married woman are being violated under Equal Protection of the Fourteenth Amendment to the United States Constitution?

III. A) Whether interpretation of Ill. Rev. Stat. 1987, ch. 110, par. 2-1203 pertaining to Summary

Judgment is repugnant to United States Constitution as construed in the 5/3/90 State Appellate Court Second District Judgment with (3) Summary Judgments and no intervening evidence after the consent issue had been decided by a previous judge; and if a conflict between circuits is created by affirming the trial court?

IV. Whether Insurance Company acted improperly by NOT proceeding to Court for Declaratory Judgment in Open Court?

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Daum v. Cooper (1904), 208 Ill. 391, 70 N.E. 339).....26,39

Eisenbrandt v. Finnegan, 509N.E.2d 1037 (Ill.App.3Dist., 1987)..12,26,39

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Klimek v. Hitch, 80 Ill.Dec. 289, 464 N.E.2d 1272 (Ill.App. 4 Dist. 1984).....12,26,39

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Scheuer v. Rhodes.....32

Teterud v. Burns, 522 D. 2d357
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Zucht v. King (1922) 260 US 174,
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OTHER AUTHORITIES

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The Constitution of the United States of America--Analysis and Interpretation; Editor Johnny Killian, 1 U.S. Government Printing Office. Washington: 1987... 8,33

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The Legal Rights of Women by Lemuel

H. Foster. Littleton, Colorado:
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Womanlaw by Anita M. Hemphill, and
Charles F. Hemphill, Jr., Englewood
Cliffs, J. J.: Prentice-Hall,
c1981.....11

Women and the Law / edited by Carol
Lefcourt, New York: C. Boardman,
1984, 3A-18 through 3A-20.....11

IN THE SUPREME COURT OF
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No._____

JOYCE BALZER, PRO SE PETITIONER

V

DONALD MEIER, JAMES BOOK,
K-B FARMS, INC. AND ROBERT H. FRIEL
PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT

To the Honorable, the Chief Justice and Associate Justices of the Suppreme Court of the United States:

Joyce Balzer, the petitioner herein, prays that a writ of certiorari issue to review the judgments of the following: 1) Trial Court Order of the 17th Judicial Circuit of the State of Illinois entered in the above-entitled case on June 23, 1989; 2) Appellate Court Order of the Second District of the State of Illinois entered in the above-entitled case on May 3, 1990; and 3) Denial of Appeal to the Supreme Court of the State of Illinois issued to plaintiff in the above-entitled case on October 3, 1990.

## OPINIONS BELOW

The Illinois Supreme Court's denial of appeal, whose judgment is herein sought to be reviewed, is reported at 1) Illinois Supreme Court, No. 70317, 10/3/90, and is reprinted in the separate Appendix A to this petition, p. 23; 2) Appellate Court for the Second District of the State of Illinois, No. 2-89-0898, 5/3/90, and is reprinted in Appendix A of this petition, pp. 11-20; 3) Trial Court of the 17th Judicial Circuit, No. 84 L 43, 6/23/89, and is reprinted in Appendix A of this petition, pp. 1-5; and denial of rehearing 8/7/89, and is reprinted in Appendix A of this petition pp. 6.

## JURISDICTION

The judgment of the Trial Court (action filed in Boone County and dismissed via closed court in Winnebago County) from the 17th Judicial Circuit of the State of Illinois (Appendix A pages 1-5) was entered on June 23, 1989. A timely petition for rehearing was denied on 8/11/89 by the Trial Court (Appendix A, page 6.) Thereafter, a timely appeal

to the Illinois Appellate Court, Second District from the Circuit Court of Boone was made on 8/31/89 (Appendix A, 7-10). The judgment of the State of Illinois Appellate Court Second District was entered on 5/3/90 (Appendix A, pp. 11-20). Thereafter, a timely petition to appeal to the Illinois Supreme Court was made 5/23/90 (Appendix A, pages 21-22) and such appeal was subsequently denied (Appendix A, p. 23). Thereafter, a timely Motion for Stay of Judgment (Appendix A, pp. 24-25 was granted by the Illinois Supreme Court (Appendix A, 26-27). Proof of application for certiorari was mailed to the Illinois Supreme Court 1/2/90 (Appendix A, pp. 28-29). The jurisdiction of the Supreme Court is invoked under 28 USCS, Paragraph 1257.

## QUESTIONS PRESENTED

I. A) Whether denial of a Trial by Jury violates plaintiff's fundamental rights in Civil Trials which involves absence of required permits for illegal rechannelization and personal gain by

public official and other adjacent landowners; B) Whether plaintiff's First Amendment Rights to Freedoms made applicable to the States through Due Process Clause of 14th Amendment are being violated, namely, Property Rights and Freedom of Expression Rights; specifically, Right to Protected Speech, Right to Assemble, and C) The Right of Parent(s) to choose children's environment free from interference under the Fourteenth Amendment.

II. Whether plaintiff's property rights as a married woman are being violated under Equal Protection of the Fourteenth Amendment to the United States Constitution?

III. A) Whether interpretation of Ill. Rev. Stat. 1987, ch. 110, par. 2-1203 pertaining to Summary Judgment is repugnant to United States Constitution as construed in the 5/3/90 State Appellate Court Second District Judgment with (3) Summary Judgments and no intervening evidence after the consent issue had been decided by a previous judge; and if a

conflict between circuits is created by affirming the trial court?

IV. Whether Insurance Company acted improperly by NOT proceeding to Court for Declaratory Judgment in Open Court?

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. A) Whether denial of a Trial by Jury violates plaintiff's fundamental rights in Civil Trials which involves personal gain and absence of required permits for illegal rechannelization by public official and other adjacent landowners?

This case involves the Seventh Amendment to the Constitution of the United States which provides as follows:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of a trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

In Section 3:665 (2 Fed Proc L Ed) where "The

right to a jury trial in civil actions at common law is protected by the Seventh Amendment, and the maintenance of the jury as a fact finding body is of such historical importance that the curtailment of the right to a jury trial should be scrutinized with the utmost care." (Curry v Pyramid Life Ins. Co.). "The jury determines issues of fact and the court resolves matters of law." (The Bill of Rights: Fundamental Freedom). Under above Section 3:665 denial of a jury trial constitutes "prejudicial error" because 1) Matters presented were properly triable by jury; 2) A jury demand was timely made; 3) Fact questions were presented; and 4) It appears that the trial judge acted in chambers errorneously. FRCP 38a; and Trial Sections 77.79 et seq. (33 Fed Proc L Ed.) Section 3:121 (2 Fed Proc L Ed) designates the Supreme Court as having jurisdiction "Where any title, right, privilege, or immunity is specially set up or claimed under the Constitution...".

Particular errors, NOT classified as "Harmless" and which interfere with substantial justice of

plaintiff's case are: 1) Evidentiary Questions and Rulings, Section 3:210--"Ordinarily, the Supreme Court will not grant certiorari merely to review evidence or inferences drawn therefrom. However, special and important reasons for the grant of certiorari are present where lower federal and state courts persistently deprive litigants of their right to a jury determination."; 2) Improper Reception and/or Exclusion of Evidence--Section 3:668 whereby, in this case not distrubing a judgment order is "inconsistent with substantial justice." and "exclusion of evidence is prejudicial." (Section; 3670); 3) Variance Between Pleadings and Proof, Section 3:672--"..; there must be an inquiry as to whether the variance affects the substantial rights of parties." 4) Erroneous or Insufficient Findings of Fact by Trial Court--Section Section 3:683 which provides that it is essential that "...the court's conclusion is clearly correct, the judgment is clearly supported by the record, or if the findings which were actually made, and the findings necessarily implied

by the judgment, are sufficient to support the judgment and are not clearly erroneous."; 5) Improper Exercise of Powers by Public Official, Section 3:121 which provides that "Certiorari is also the proper method of reviewing claims that a state official exercised his powers in an unconstitutional manner"; and 6) Individual Judge Acting in Chambers, Section 3:44--"An action by an individual judge sitting in chambers may be directly reviewed by the United States Supreme Court if it appears that the judge acted as a judicial tribunal having jurisdiction over the matter, his judgment is not subject to review by any other court of the state, and there is no higher court of the state to which another petition for the relief sought can be addressed." (2 Fed Proc L Ed.)

I. B) Whether plaintiff's First Amendment Rights to Freedoms made applicable to the States through Due Process Clause of the 14th Amendment are being violated, namely, Property Rights and Freedom of Expression Rights, specifically, Right to Protected

Speech, Right to Assemble, and the Right of Parent(s) to choose children's quality environment free from interference?

1) This case involves the Fourteenth Amendment (Section 1) of the United States Constitution which provides that "...no state shall 'deprive any person of life, liberty, or property without due process of law.' Since that decision, the Supreme Court has ruled that a denial by a State of certain of the rights contained in the Bill of Rights actually represents a denial of due process of law." (The Bill of Rights: Fundamental Freedom).

2) This case also involves the Fifth Amendment--Due Process of Law which provides that "...government cannot unfairly or arbitrarily interfere with personal liberty or property. (United States Constitution). Essential requirements of Due Process involve "Notice, Hearing, Impartial Tribunal, Confrontation and Cross-Examination, Decision on the Record, and Counsel." (The Constitution of the United States of America--Analysis and Interpretation, pp.

1639-1643); (Constitutional Law, pp. 145-148).

3) This case also involves the First Amendment of the United States Constitution. The First Amendment provides that "Congress shall make no law...abridging the freedom of speech." Also, under the First Amendment is the right to "Assemble And To Petition For Redress Of Grievances." (Civil Rights (6 Fed Proc, L Ed.))

4) This case, involving the Fourteenth Amendment and 5th Amendment, of the United States Constitution, preserves the liberty of self-determination in choosing preferred environment for one's children and oneself under substantive due process where "The liberty mentioned in [The Fourteenth] Amendment means...the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling...and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above

mentioned." (Teterud v. Burns). These are "substantive rights which have been implied from, or have been read into the United States Constitution (e.g. association and belief, privacy) (Constitutional Law, p. 150).

II. Whether plaintiff's property rights as a married woman are being violated under Equal Protection of the Fourteenth Amendment to the United State's Constitution?

1) This case involves the Fourteenth Amendment (Section 1) which guarantees that "[n]o State shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws."

2) This case also involves Property Rights of Married Women granted by the State of Illinois under a) Common Law Agreement and b) Joint Tenancy:

a) Illinois is a common-law state: "In Illinois a married woman is the sole owner of her separate property whether acquired before or after the

marriage...She is entitled to her own earnings and the income of her own property and she may manage, sell and convey her separate property without the consent of her husband." (The Legal Rights of Women; p. 52.) "..,in common law states the courts hold that a husband and wife separately own whatever they have independently purchased with their own funds." (Womanlaw; pp. 139-142.)

b) The focus of this controversy is held in joint tenancy. "When property is owned in joint tenancy by a husband and wife, it is legally said that each owner has an undivided one-half interest in the entire property. (Womanlaw; pp. 139.) "As in common law states, management and control rights are based on title...The management and control provisions confer on each spouse exclusive dominion over his/her individual property...Spouses must act together if the property is held in the conjunctive "and" form." (Women and the Law; pp 3A-18 through 3A-20).

III. A) Whether interpretation of Ill. Rev. Stat.

1987, ch. 110, par. 2-1203 pertaining to Summary Judgment is repugnant to the United States Constitution as construed in the 5/3/90 State Appellate Court Second District Judgment, Section 3:115 (2 Fed Proc, L Ed)--"The Supreme Court can also review a contention that a state statute, as construed and applied, is repugnant to the Constitution or federal law." and Section 3:121 (Fed Proc L Ed) "Where the validity of a state statute is drawn into question on the ground of it being repugnant to the Constitution,.."; and if a conflict between circuits on similar cases is created by the Second District Appellate Court affirming the trial court? (Eisenbrandt v Finnegan, 509 N.E.2d 1037 (Ill.App.3 Dist. 1987) and (Klimek v Hitch, 80 Ill.Dec. 289, 464 N.E.2d 1272 (Ill.App.4 Dist. 1984). (2 Fed Proc, L Ed.)

IV. This case involving insurance liability is 'affected with a public interest' according to German Alliance Ins. Co. v Lewis. Being affected with the public interest, "business methods"

regulation is required under the 1945 Public Law 15 (the McCarran-Ferguson Act) passed by Congress.

## STATEMENT OF THE CASE

This is a controversial Trespass action involving the illegal REchannelization and interception (App. B. Exh. 3 & 4) of a federal creek just prior to its natural course of entry on plaintiff's land initiated by Public Official--Boone County Board member, K-B Farms Corporation's director, Production Credit director and another adjacent landowner in order to drain their wetlands, such being done knowingly, according to public official's Donald Meier's deposition, without any state or federal permits (App. pp. 1-3).

Without a Prior Rechannelization Permit by the defendants plaintiff alleges that "Due Process Rights" under the Fourteenth Amendment are being violated. The Corps states that the REchannelization cannot be undone; yet, the Corps issued a Post Facto Permit to the defendants

February 1, 1984 resulting in plaintiff's federal court dismissal.

This federal question of no required permits was first brought up in State Court in Complaint (App. pp. 4-8). Lack of due process was brought up for the first time in the Motion For Rehearing of Reconsideration of Motion For Summary Judgment (App. pp. 39-40) and Reply To Motion For Sanctions Pursuant Section 2-611 (App. p. 42-43) plus all subsequent briefs; no judgment call was made. It then was brought up in the Petition to Appeal to the Illinois Supreme Court (App. pp. 51-57) where appeal was denied (App. A. p.11). The federal question pertaining to public official was first brought up in Reply to Motion For Santions Pursuant to Section 2-611 (App. p. 45).

I. This trespass action was brought into State Court by plaintiff through counsel, in conjunction with husband, with the original complaint filed October 25, 1984 (App. pp. 4-7), specifying the theory or true nature of case as REchannelization. According to Supreme Court Rule 276 (Ill. Rev.

Stat.) request for trial by jury in the Trial Court was made with the complaint (App. pp. 8-9). Plaintiff, sought venue out of Boone County due to influential defendants and such venue was denied March 28, 1985. (App. pp. 15). Due to lack of action the case went on slaughter call and plaintiff learned that "These kinds of cases never go to trial." Subsequently, plaintiff, in conjunction with six of her eight children, picketed the court house for 4 hours June 4, 1987 (App. B. Exh. 1-2).

The record reflects that from this point on, after plaintiff's exercise of First Amendment Rights, irregularities ensued which led to case dismissal WITHOUT trial by jury as requested in timely fashion, in violation of plaintiff's Seventh Amendment Rights. (App. 8-9). The federal question regarding protected speech and right to assembly was first brought up in Trial Court at Motion for Rehearing and Petition For Leave To Appeal to Illinois Supreme Court (App. p. 59). The appeal was denied. The federal question of the Right of

Parent(s) to choose quality environment free from interference was first brought up at the Trial Court level in REBUTTAL OF INTERPRETATION OF BALZER'S DEPOSITION IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (March 4, 1988) filed June 16, 1989 (App. p. 38) prior to the signing of the Trial Court Judgment Order (App. A. p. 5).

The federal question of denial of trial by jury was first brought up in the Trial Court in "MOTION FOR REHEARING OF MOTION FOR RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT (App. pp. 39-40) and "Reply TO MOTION FOR SANCTIONS PURSUANT TO SECTION 2-611 (App. pp. 42, 45). Thereafter, it was brought up in the Appellate (App. pp. 48, 50, 58) in intermediate court where 5 of the 6 questions presented in appellant's brief (App. 48-50) dealt with the inappropriateness of summary judgment and case dismissal without a trial by jury; also, it was brought up in the Petition to Appeal to the Illinois Supreme Court (App. p. 54) where appeal was denied; Judgments rendered were August 8, 1989 Trial Court Order (App. A p. 6) and the 5/3/90

Appellate Judgment Order (App.[A] pp. 12-20) which confirmed the Summary Judgment of the trial court. This was done in spite of the core irregularities involved, in general: 1) Changing the theory of the case, 2) Creating a contradiction within plaintiff's case, and 3) Attempting to block the material facts in issue, consent and damages, so as to effect case dismissal; these interferences to a trial by jury are as follows : (1) By changing the theory of the case--the Amended Complaint was changed. The true nature of the case in original Complaint (App. p. 6) was changed from REchannelization (make new pathways) to channelization (rework) in the Amended Complaint (App. p. 12). [ Point #7 of both Complaint and Amended Complaint are incorrect insofar as Donald Meier, public official, did not have access to the creek prior to rechannelization as it did not run on his land South of rt. 173. Such rechannelization gave him such access.] This substantial interference with a trial by jury was first brought up in the MOTION FOR REHEARING OF

RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT in the Trial Court (App. p. 40) and again in pleadings and briefs to the Appellate Court. The judgment call on Amemded Complaint was "taken with the case and omitted in appellate court judgment order.

(2) Secondly, interference with a jury trial was created by setting plaintiff's husband up for contradiction--As a reply to the affidavit of the public official, counsel drew up Robert Balzer's reply affidavit--omitting the "h" out of the word channelization which means "rework a creek" thus creating cannelization--a homonym to canalization which means "make new pathways" and INcorrectly describes the topic of a phone conversation which public official initiated to husband, Robert Balzer (App.21-22). The following day after husband signed affidavit, plaintiff requested new affidavit from counsel who then drew up second affidavit with the correct spelling "channelization" (App. p. 24). However, counsel proceeded to file on July 28, 1987 the INcorrect affidavit (App. pp. 21-22). Defense moved also on July 28, 1987 with public

official's affidavit (App. pp. 19-20) and plaintiff's husband's INcorrect affidavit (App. pp. 21-22) for the first Motion for Summary Judgment, (App. p. 17-18) which subsequently was denied by Judge Kapala August 28, 1987 (App. A p.26). Approximately five months later, 12/17/87 counsel allowed defense counsel to deposition husband (App. p. 25) with the Correct unsigned affidavit (App. p. 24) which was later found in file by plaintiff, returned by former counsel. After discovering case dismissal 6/16/89, almost a month after 5/19/89 case dismissal, plaintiff found in the court file (a) the unsigned Trial Judgment Order App. A. pp. 1-5), (b) Public Official Donald Meier's Affidavit (App. pp. 20-21 ), (c) the Incorrect Affidavit of Robert Balzer (App. p. 22), (d) Robert Balzer's Deposition, (App. p. 25) and (e) case citation, 516 N.E.2d 518 Commonwealth Western Mortgage v. Williams (114 Ill. Dec. 1987, 516 N.E.2d 515(Ill. App.1 Dist. 1987. (App. B, Exh. 5 & 6). (Since the precedent case citation was omitted by the Trial Court in Record on Appeal, luckily plaintiff had

the complete court file copied the day file was finally found, June 16, 1989.) Proof that the Corrected Affidavit was used to deposition Robert Balzer is on page 63 of his deposition (App. p. 25). This "Variance Between Between Pleadings and Proof" was first brought up to Trial Court at the Rehearing after case dismissal in Motion for Reconsideration of Motion for Summary Judgment (App. p. 40) and the Petition to Appeal to Illlnois Supreme Court, (App. p. 51). No judgment call at any level was made on this substantial interference with federal question of Trial by Jury as requested in timely fashion. (App. pp. 8-9).

(3) Thirdly, attempting to block material facts in issue--the Court File, discovered 6/16/90, contained NOTHING on behalf of Plaintiffs but included A) MOTION FOR SUMMARY JUDGMENT with Interpretation of Plaintiffs' discovery depositions" and B) "REQUEST FOR ADMISSION OF FACT AND OF GENUINENESS OF DOCUMENT". Regarding document (A)--it preceded the motion for second summmary judgment with interpretation of

plaintiffs' discovery depositions--parts taken out of context, interpretations and conclusions drawn in violation of Supreme Court Rule 212(c) (Ill. Rev. Stat.) "Partial Use: If only a part of a deposition is read or used at the trial (In instant case Trial by Jury Denied) by a party, any other party may at that time read or use or require him to read any other part of the deposition which ought in fairness to be considered in connection with the part read or used." This second summary judgment, like the first, was also denied. The Memoradum of Decision (App. pp. 29-30) for this judgment was not filed until one year later to the exact date of May 13, 1989, and the second judgment order (App. pp. 31-32) was not signed, nor filed in the court file. Plaintiff's answer, REBUTTAL OF INTERPRETATION OF BALZERS' DEPOSITION IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT was not filed by former counsel in a timely fashion; however plaintiff did file the rebuttal placing material facts in issue 6/16/90, (App. pp. 37-38), just before the Judgment Order for Case Dismissal

was signed 6/23/89 (App. pp. 1-5). However, on the docket sheet the filing of such document was typed 8/16/89, 2 months later. This is one of many "errors"; one can clearly see that the document was actually stamped 6/16/89, and thus placed material facts in issue pertaining to no consent and reality of damages. This document refutes both issues of Consent and Damages, and according to Sup. Ct. Rule 272 (Ill. Rev. Stat.) "...the judgment becomes final only when the signed judgment is filed." B) "REQUEST FOR ADMISSION OF FACT AND OF GENUINENESS OF DOCUMENTS preceded defendants' "third" move for Summary Judgment, "MOTION FOR RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT" filed May 8, 1989 (App. pp. 33-35). Former counsel failed to file plaintiff's answer to this document which points out how defense, submitting Agricultual Stabilization Conservation Service Records (App. B. Exh. 9 & 10), erroneously concluded in the June 24, 1989 Judgment Order that since 1979 Cropland Total was 89 acres and the 1987 Cropland Total was 92.3 acres "2b) The Balzers lost no tillable acreage as

a result of the creek rechannelization and in fact have increased to total crop land on their property since the rechannelization;" (App. A. p. 3) when the increase in total Cropland Acreage came NOT from the flooded acreage lying dormant but from pastureland in a different field. Both the REBUTTAL OF INTERPRETATION OF BALZER'S DEPOSITION IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (March 4, 1988) filed June 16, 1989 (App. pp. 37-38) and ANSWER TO REQUEST FOR ADMISSION OF FACT AND OF GENUINENESS OF DOCUMENT (March 27, 1989), filed 7/24/89 (App. 47) were before the Trial Court for the Motion for Rehearing 8/3/89 which was denied (App. A. p. 6). Exposure of defense's erroneous documents was also before the Appellate Court in appellant's brief with no judgment call; and in the Petition to the Illinois Supreme Court (App. p. 60) where appeal was denied. (App. A. p. 23).

Additional "Exclusion of Evidence" occurred when the Trial Court allowed the defendants-appellees to bring in plaintiffs-appellants' depositions one

whole month AFTER the Brief and Argument Deadline so such material was unavailable to appellant when writing plaintiff/appellant brief. According to Sup. Ct. Rule 212(d) (Ill. Rev. Stat.), "If any action in any court of this or any other jurisdiction of the United States is dismissed and another action involving the same subject matter is afterward brought between the same parties or.., all depositions lawfully taken and duly filed in the former action,..,may be used as if taken in the last action,.."; furthermore, according to Sup. Ct. Rule 207(b) "A deposition so certified requires no further proof of authenticity."

II. Whether plaintiff's property rights as a married woman are being violated under Equal Protection of the Fourteenth Amendment to the United States Constitution?: The Trial Court Judgment Order ignores plaintiff's property rights focusing on husband's alleged consent; however, the Appellate Court Judgment Order goes one step further and actually states, "...the plaintiffs

gave their consent for the work performed on Beaver Creek." This is the second instance when the property rights of plaintiff have been ignored and the legitimate question to be asked is, "Whether plaintiff's property rights as a 'married woman' are being violated under Equal Protection of the Fourteenth Amendment to the United States Constitution?" Plaintiff first brought up the fact of not knowing anything about the Rechannelization Project until it was over and discovered January 1, 1980 in the Trial Court in Rebuttal of Defendants' Interpretation of Plaintiffs' Depositions filed June 16, 1989 (App p. 37). "A MOTION FOR LEAVE TO SUPPLEMENT PETITION FOR LEAVE TO APPEAL" (App. p. 63)) was allowed by the Illinois Supreme Court on violation of married woman's property rights (App. p. 64).

III. Pertaining to the third question plaintiff can find no historical basis for (3) Summary Judgments; especially, resurgence of prior issue with no intervening evidence. (N.B. Defense's

5/5/89 letter to judge talks about "renewed" summary judgment. It is really the third one. Several precedent cases, mirroring plaintiff's case, now appear in conflict with the judgment of Appellate Court; namely, Daum v Cooper, Eisenbrandt v Finnegan, and Klimek v Hitch.

7. Lastly, whether Rockford Mutual Insurance Company acted improperly by NOT proceeding to Court for Declaratory Judgment on Liability Policy held by Defendants, Public Official and K-B Farms Director, in the Fall, 1979 when the Rechannelization Project was executed. May, 1988, plaintiff(s) began receiving a computerized billing from counsel; since the case was taken on contingency an appointment was made to clarify that issue. However, plaintiff and husband were told that another lawyer was recently involved representing the insurance company. Rather than go to court for declaratory judgment the insurance company was willing to throw some money into the pot. Plaintiff was told that though the second

summary judgment was still in plaintiff's favor the judge had said it was a close judgment call, like the "thickness of a human hair" (App. pp. 29-30). Plaintiff refused counsel's offer to bow out and be even attorney fees. Plaintiff was also told that the case would either go to trial or settlement. A little over one year later, and several cancelled Pre-Trial Notices (App. B. Exh. 7 & 8) later, plaintiff's case was dismissed without any notice to plaintiff on May 19, 1989. Plaintiff showed up for all the announced pre-trials only to sit and hear from the bailiff that they had been cancelled. (The record indicates that Attorney Kardell's name appeared on the Pre Trial notices 12/6/88 for 12/9/88 (App. B. Exh. 7) and again 5/8/89 for 5/19/89 (App. B. Exh. 8), the day of plaintiff's case dismissal). Likewise, defense attorney mailed a copy of his letter to the judge as a reminder for the "renewed" summary judgment motion and pretrial conference" (App. p. 36) for 5/19/89. Neither the Boone County Court nor Winnebago County Court dockets shows any activity

on this case for May 19, 1989. In June, 1990 House Counsel for Rockford Mutual Ins. Co. informed plaintiff and husband that they have been defending this lawsuit for 10 years as they carried the liability policies for public official Donald Meier and K-B Farms Corporation Director in the the Fall, 1979 when illegal rechannelization was effected. This issue about who received the money the insurance company was willing to throw into the pot was first brought up in Reply Brief of Plaintiffs-Appellants, where no judgment call was made. It was then brought up in Illinois Supreme Court in "Motion by petitioner, pro se, for leave to supplement the petition for leave to appeal instanter. Motion allowed." (App. p. 64). Plaintiff's motion to stay the mandate pending application for certiorari was granted and filed October 29, 1990 (App. A. pp. 24-25).

REASONS WRIT SHOULD BE GRANTED

I. Enforcement of the Judgment Orders in this controversy deprives plaintiff of Rights accorded all United States Citizens--Rights in Civil Trials, Property Rights, First Amendment Freedom of Expression Rights, Procedual Due Process and the Freedom to choose children's environment free from interference. These rights, dependent on Seventh Amendment Rights in Civil Trials, have been violated whereby liberty and property rights are protected under procedural due process of the Fourteenth Amendment. Denial of a civil trial has interferred with judicial relief requested. Plaintiff is seeking legal relief for both compensatory and punitive damages. Plaintiff alleges injury in fact because of property loss in flooded plain, subsequent economic losses, and recreational, aesthetical, environmental injuries and the freedom of choosing plannned environment for children. Judicial relief alone can redress these injuries.

"Certiorari is also the proper remedy when...some title, right, privilege, or immunity is

claimed under federal law." (Section 3:12, 2 Fed Proc, L Ed). "..,special and important reasons for the grant of certiorari are present where lower federal and state courts persistently deprive litigants of their right to a jury determination." Section 3:210 (Rogers v Missouri, P.R.Co.).

Above in Statement of Facts plaintiff pointed out variances between pleadings and proof and erroneous insufficient findings of fact by judge in chambers. "..;there must be an inquiry as to whether the variance affects the substantial rights of the parties." (Berger v United States). Plaintiff alleges the variance does, indeed, affect plaintiff's substantial rights. The judgments of both the Trial Court and the Appellate Court clearly do not conform with the true facts. The judgment of trial court is not supported by the record and is clearly erroneous based on incorrect theory of the case, affidavit/deposition trick, and erroneous conclusions of ASCS records regarding damages to say nothing of inaccessibility of plaintiff's file and improper reception and

exclusion of evidence. The appellate court order states, "We find from the evidence presented that no reasonable person could determine that the Balzers did not consent to the work performed." (App. A. p. 19) "The excluded evidence would have been sufficient to support a verdict in favor of the appellant." (Hutter Northern Trust v Door County Chamber of Commerce).

The judgments appealed from are "against the manifest weight of the evidence." (Wallace v. Blue Cross Hosp. Serv.,) and represent a denial of plaintiff's constitutional rights. Plaintiff requested a trial by jury (App. p. 8 & 9) and paid the required fee; yet, the judge, not a jury determined issue of fact. ",.,where a state court is enforcing a federally created (civil) right, the right of trial by jury is a requirement. Even when a single valid claim under federal law is asserted along with other cause of action based on state law, jury trial must be offered as to the entire state proceeding." (Dile v. Akron C. Y.R. Co.,). ",..through passage of the Federal rules of Civil

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Procedure..,where legal and equitable actions are joined, this fundamental right now remains protected." (The Bill of Rights: Fundamental Freedom, pp. 39-40).

"Certiorari is also the proper method of reviewing claims that a state official exercised his powers in an unconstitutional manner." (Section 3:121, 2 Fed Proc, L Ed); (Zucht v King). Though "Public officials duties are a matter of state law" (Smith v Indiana) "When an official acts unconstitutinally the action is not state action at least for purposes of the Eleventh Amendment (Ex Parte Young). "State officials, however, in their individual capacity, can commit constitutional wrongs and in such a case, the Eleventh Amendment provides no refuge from federal jurisdiction." (Scheuer v Rhodes). Likewise, the Fourteenth Amendment qualifies pro tanto the Eleventh Amendment." (Constitutional Law, pp. 18).

Certiorari is also the proper method for reviewing claims of violations of due process rights which occurred 1) Under the Fourteenth

Amendment when Defendants proceeded to affect plaintiff's property with no required permits which would have afforded plaintiff with equal opportunity to respond; 2) How can violations of permit laws by defendants (depriving plaintiff of public hearing prior to rechannelization); allowing Corps to intrude into plaintiff's case in federal court accompanied by the granting defendants Post Facto Permit and resulting in case dismissal; and witnessing dismissal of plaintiff's case in closed session in State Court not be perceived as gross oversight of procedural due process? Basic requirements of procedural due process; i.e. notice, hearing and impartial tribunal are lacking. In all of these situations plaintiff did not have the opportunity to know what was proposed or how to prevent it. (Goldberg v. Kelly,) "'Parties whose rights are to be affected are entitled to be heard.'" (Constitution of the United States of America--Analysis and Interpretation, pp. 1640)..

Certiorari is also the proper means to review

First Amendment violations of Protected Speech and Assembly, (United States Constitution). "The Right of Free Speech is perhaps the most important in our political system; it is the ultimate foundation upon which all individual and political freedoms rest. It is the unique Freedom to Express opinions openly and without fear of recrimination that enables our political system to work effectively...The society is then governed in response to better informed and more concerned citizens." (The Bill of Rights: Fundamental Freedom). Plaintiff's motivation was without malice. Plaintiff operated within the local ordinance peacefully. The ordinance is not valid where it is so vague as not to inform one "of the conduct they must take to avoid the sanction of the particular law"--specifically, in instant case, picketing the court (App. B. p. 1); (Constitutional Law, 226-227). Under the doctrine of overbreadth, "A law may be facially clear but may sweep too broadly if it indiscriminately reaches both protected and unprotected

expression." (Ibid.) Impetus to picket included: 1) The federal case dismissal had already been experienced by plaintiff, 2) Now, the state case was on slaughter call, and 3) The defendants were still the same and plaintiff learned that "These cases never come to trial. "...in 1925 the Supreme Court declared that the Due Process Clause of the Fourteenth Amendment protected freedom of expression against state infringement." (Gitlow v New York (1925)). Ibid. "For, indeed, if the rights of one are suppressed, the freedom of all is jeopardized." (The Bill of Rights: Fundamental Freedom, p. vi).

Regarding the self-determination to raise children in desired environment, "It has been suggested that rights which may arguably be asserted under the Ninth Amendment: "...are rights which a free society reserves to the people.'" (Ibid. p. 46). Plaintiff states that the area in controversy (115 acres) was purchased in 1974 as a future homesite and place to rear children outside the sizeable city (175,000) and away from

concomitant problems. Due to seizure of creek by defendants the environmental, recreational, aesthetical realities are now non-existent. Inherent in "Pursuit of Happiness" is the concept of liberty--which includes "privacy", freedom from the interference with plans, performance and enjoyment. (Constitutional Law, p. 150). "The Court has said that liberty "denotes not merely freedom from bodily restraint but also the right of the individual to...establish a home and bring up children...as essential to the orderly pursuit of happiness by free men," (Ibid. p. 148); [and women]. Liberty also involves "substantive constitutional rights and other fundamental freedoms and a variety of fundamental interests relating to personal autonomy and choice." (Ibid. p. 151).

II. Plaintiff states that enforcement of the judgment orders violates her property rights as a married woman under Equal Protection of the Fourteenth Amendment to the United State's

Constitution. Briefly, in the Fall, 1979, plaintiff attended the U. of Illinois from Monday through Thursday for 16 weeks. Noone contacted plaintiff about any project of any kind, though plaintiff owns the property in Joint tenancy with husband. Only after the discovery of the creek interception, did plaintiff learn about it which was 1/1/80. Plaintiff alleges that she should have been contacted about any disposition or taking of her property. Since defendants had received NO permission from husband to rework the creek they just took it by intercepting it (App. B, Exh. 4). Husband's appeal was dismissed because plaintiff signed the appeal notice for him. "In Reed v Reed (1971), the court unanimously struck down a state law giving men a preference over women as administrators of estates." (Constitutional Law, p. 183). Yet, the Trial Judgment Order states, "..,through the actions of Robert Balzer, a joint tenant in possession and control of the property, gave the defendants their apparent consent for the rechannelization..." Plaintiff asks the legitimate

questions: 1) Does leaving your home for 4 days a week constitute abandoning or leaving your property in the control of the other joint tenant?; 2) How can the actions of someone else speak for plaintiff?; and 3) Is not specific consent with property issues required rather than "apparent" consent? (Actually no consent could have been given because the type of permission solicited and refused on the phone did not even resemble the actual work done.) Plaintiff has honestly and consistently disavowed any prior knowledge. Absolutely no contact was made to plaintiff for her consent for anything. Both under common law for married women and joint tenancy rulings Equal Protection appears to apply, App. pp(3-4)

III. Enforcement of the judgment orders appears to violate summary judgment rules and is repugnant to United States Constitution. Though choosing NOT to respond to many of the arguments in plaintiff's brief the appellate judgment order ruled on Ill. Rev. Stat. 1987, ch 110, par 2-1203. This is

really moot as 2-1203 only applies to non-jury trials; whereas plaintiffs requested trial by jury in timely fashion with material fact on damages and consent issues. Summary Judgment appears inappropriate, also, for the reasons set forth in plantiff's brief (App. pp 48-50). Plaintiff points out contradiction between MOTION FOR RECONSIDERATION OF MOTION FOR SUMMARY JUDGMENT, (App. 33-35) whereby, defense's admission "1. Although the Court has previously ruled that there is a general issue of material fact as to whether or not the plaintiffs,..consented..." (App. p. 33) and Trial Court Judgment Order "1. There is no genuine issue of mateial fact as to whether or not the Balzers consented...(App.A. p. 1). Enforcement of the judgment orders, like-wise, appears to create contradictions with rulings of other circuits in Daum v. Cooper, Eisenbradnt v Finnegan, and Klimek v Hitch) as set forth in plaintiff's brief (App. pp. 56-57). Certiorari should be granted to resolve conflicts in principle.

Historically, this controversy has been going on

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in excess of 11 years. In general, it involves a county board member meeting in a state office (ASCS) in the presence of its director discussing how to drain wetlands at plaintiff's expense for own personal gain--how to by-pass permit laws (App. pp1-3); and when case is in federal court such case is dismissed with the Army Corps of Engineers trumping in with their Post Facto Permit (Reply Brief of Plaintiffs-Appellants [illegible] and then state dismissal. Both the Trial Court Order and the Appellate Court Order merely concretize the thinking that "These kinds of cases never go to trial." In the Trial Judgment Order the errroneous facting-finding has been exposed. Regarding the issue of mitigating damages plaintiff no longer has what was bought; it cannot be put back like it was nor with any permanency with the natural creek bed within 15 ft. and less of the 27'X5'X5280+' man-made channel. In addition all the other damages exist with all the meanders out and additional drainage causing flooding back on plaintiff's land etc. Contrary to

what the appellate order states, Denial of Trial by Jury was properly presented and the issues why summary judgment is inappropriate. The Appellate Court chose not to address issues of fraud. Their evidence in the defense's brief consists of convoluted statements, parts of discovery deposition interpreted etc., all contrary to Supreme Court Rules regarding depositional use. Furthermore, it taxes the imagination greatly that anyone would want done to them what plaintiff has endured.

The Supreme Court should hear this case just to see the atrocities being committed in our courts in the State of Illinois. Unfortunately, the Spirit of the American people is being either broken or soured by these injustices; thus, counterproductive to a strong nation filled with the ideals upon which this country was founded.

IV. Lastly, regarding the money Rockford Mutual Insurance Company was "willing to throw into the pot". Do not these claimants (defendants) still

have unmet obligations to plaintiff regarding injuries inflicted? May, 1988, plaintiff's counsel switched from contingency to computerized billing [illegible] and waived that issue aside when confronted about it. It was at that time, also, plaintiff(s) was told "We are here to talk about the case instead; and that another lawyer representing the insurance company is involved." Pre-Trial notices indicate that the two defense attorneys remained involved and a new attorney became involved during the 1988-89 interim. The ripple of plaintiff's constitutional right violations which began on the trial level continued to the appellate level, EXCEPT for granting stay of mandate (App. A, pp 4-17).

## CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

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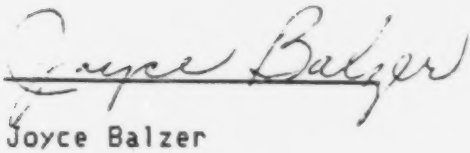
Respectfully submitted



Joyce Balzer

1302 Coolidge Place

Rockford, Illinois 61107

(815) 229-4239

January 1, 1991

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

90-1209 (2)

NO.

Supreme Court, U.S.
FILED
JAN 2 1991
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF
THE UNITED STATES

JOYCE BALZER, PRO SE PETITIONER

V

DONALD MEIER, JAMES BOOK,
K-B FARMS, INC. AND ROBERT H. FRIEL

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT

Appeal from the Illinois Supreme Court

"Appendix A"

Joyce Balzer, Pro se
1302 Coolidge Place
Rockford, Illinois
61107

IN THE CIRCUIT COURT OF THE 17TH CIRCUIT
COUNTY OF BOONE, ILLINOIS

| | | |
|---|---|---|
| ROBERT BALZER AND JOYCE BALZER, | ) | No. 84L43 |
| Plaintiffs, | ) | |
| v | ) | |
| DONALD MEIER, JAMES BOOK, K-B FARMS, INC., AND ROBERT H. FRIEL | ) | |
| Defendants, | ) | |

JUDGMENT ORDER

This matter came on for hearing on May 19, 1989, in connection with the Motion for Reconsideration of Motion for Summary Judgment filed on behalf of the defendantdefendants, Donald Meier, James book, and K-B Farms, Inc., which motion was joined in by the other defendant, Robert H. Friel, and all the parties, including the plaintiffs, Robert Balzer and Joyce Balzer ("the Balzers"), were represented by their respective counsel. Upon consideration of the record and the arguments of counsel, the Court made and hereby confirms the following findings and determinations:

1. There is no genuine issue of material fact as to whether or not the Balzers consented to the alleged trespass upon their property and the

rechannelization of Beaver Creek because it is clear as a matter of law that the Balzers, through the actions of Robert Balzer, a joint tenant in possession and control of the property, gave the defendants their apparent consent for the rechannelization of the creek in that:

(a) The appropriate standard is set forth in Restatement of Torts Second, Section 892(2), which states:

If words or conduct are reasonably understood by another to be intended as consent, they constitute apparent consent and are effective as consent in fact;

(b) Robert Balzer admits that he purposely left the defendants with the impression that he had no objection to the project except for its possible cost to himself and that he knew that the defendants were making plans to proceed with the project at a meeting to which he was invited to attend and that, knowing of such planning meeting, he neither registered any objecion to the project proceeding nor attended the meeting to express

curiosity about the plans; and

(c) Regardless of whether or not Robert Balzer intended to give actual consent, it is undisputed that his words and conduct gave apparent consent and that he purposely left his neighbors, the defendants, with the impression that he had consented to the channelization, which was also the undisputed understanding and impression of his wife, Joyce Balzer, for nearly two years after the project was finished.

2. There is no genuine issue of material fact as to whether or not the Balzers sustained any damages because it is undisputed that the Balzers suffered no monetary loss or damages as a result of the creek rechannelization in that:

(a) The Balzers' property was not diminshed in value;

(b) The Balzers lost no tillabile acreage as a result of the creek rechannelization and in fact have increased the total crop land on their property since the rechannelization;

(c) It is undisputed that the defendants

requested permission from Joyce Balzer for the defendants' workers to come onto the Balzer property at the only location where it had been diverted from that property in accordance with the after-the-fact permit issued by the Army Corps of Engineers authorizing the defendants to perform that restoration work on Beaver Creek, but Joyce Balzer refused such permission; and

(d) It is undisputed that the Balzers have failed to mitigate their claimed damages as a matter of law because the only reason that the creek has not be redirected back onto the Balzer's refused to permit the creek to be restored back to its original condition on their property.

Pursuant to the above findings and determinations and in accordance with the Court's oral ruling on May 19, 1989, the Court hereby grants summary judgment in favor of the defendants, donald Meier, James Book, K-B Farms, Inc., and Robert H. Friel, and against the plaintiffs, robert Balzer and Joyce Balzer, as to all claims and issues. This is a final order, and there is no

just reason for delaying enforcement or appeal.

Entered:

Date: 6/23/89 K. Craig Peterson,

Filed 6/23/89

Associate Judge

Prepared and Approved By:
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(815) 965-8775
Attorney for Defendant Friel

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF BOONE, ILLINOIS

| | | |
|---|---|---|
| ROBERT BALZER and JOYCE BALZER, Plaintiffs, | ) | |
| v. | ) | 84 L 43 |
| DONALD MEIER, JAMES BOOK, K-B FARMS, INC., AND ROBERT H. FRIEL, DEFENDANTS. | ) | O R D E R |

This matter came on for hearing on August 3, 1989, in connection with the Motion for Rehearing of Reconsideration of Motion for Summary Judgment filed on behalf of the plaintiffs, Robert Balzer and Joyce Balzer ("the Balzers"). Upon consideration of the record and the arguments of the parties, the Court hereby denies such Motion in all respects and confirms its Judgment Order of June 23, 1989, granting summary judgment for the defendants. The Court denies the defendants' Motion for Sanctions pursuant to Section 2-611.

This is a final order, and there is no just reason for delaying enforcement or appeal.

Entered:

Date: 8/7/89

K. Craig Peterson,
Associate Judge

Filed 8/11/89

APPEAL TO THE ILLINOIS APPELLATE COURT, SECOND DISTRICT

FROM THE CIRCUIT COURT OF BOONE

ROBERT BALZER AND JOYCE BALZER

PLAINTIFFS-APPELLANTS )
VS. )
DONALD MEIER, JAMES BOOK, ) 84 L 43
K-B FARMS, INC., AND )
ROBERT H. FRIEL )
)
DEFENDANTS-APPELLEES )

NOTICE OF APPEAL

Plaintiffs-Appellants Robert and Joyce Balzer, pro se, hereby appeal to the Illinois Appellate Court for the Second District from the following orders entered in this matter in the Circuit Court of Boone County:

1. The section of the order of August 3, 1989, pertaining to dismissal of case in response to Motion for Rehearing of Reconsideration of Motion for Summary Judgment.

2. The order of May 19, 1989, granting Defendants' Reconsideration of Motion for Summary judgment, contradicting original order of denying defendants summary judgment.

By this appeal, Plaintiffs-Appellants will ask the Appellate Court to uphold the original Judgment

Order of May 17, 1988, assign this case to an impartial circuit, reinstate all Counts of the Complaint as set forth in the Motion for Rehearing, proceed with a trial on the merits as to all claims, or for such other and further relief as the Appellate Court may deem appropriate to grant.

Robert and Joyce Balzer
Joyce Balzer 8-31-89
1302 Coolidge Place
Rockford, Illinois 61107
(815) 399-6831

Filed 8/31/89

APPEAL TO THE ILLINOIS APPELLATE COURT, SECOND DISTRICT FROM THE CIRCUIT COURT OF BOONE

| | | |
|---|---|---|
| ROBERT BALZER AND JOYCE BALZER | ) | |
| | ) | |
| PLAINTIFFS-APPELLANTS | ) | |
| | ) | |
| VS. | ) | 84 L 43 |
| DONALD MEIER, JAMES BOOK, K-B FARMS, INC., AND ROBERT H. FRIEL | ) | |
| | ) | |
| DEFENDANTS-APPELLEES | ) | |

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AMENDED DOCKETING STATEMENT

The docketing statement heretofore filed in this appeal is hereby amended in the following respect:

Issues Proposed To Be Raised:

1. That the evidence presented at the trial pertaining to the plaintiff's consent was insufficient as a matter of law.

2. That any possible consent attributed to the plaintiff upon which defendants acted violated the Statute of Frauds.

3. That defendants' second Motion for Summary Judgment out not to have been before the court since their first motion for summary judgment was

ruled in favor of the plaintiffs and a whole year elapsed before they acted.

Joyce Balzer

Joyce Balzer

Robert Balzer

Filed 8/31/89

STATE OF ILLINOIIS APPELLATE COURT SECOND DISTRICT

OFFICE OF THE CLERK
708/695-3750

APPELLATE COURT BUILDING
ELGIN, ILLINOIS
60120-5558

05/03/90
THE COURT HAS THIS DAY ENTERED THE FOLLOWING ORDER
IN THE CASE OF:
Gen. No. 2-89-0898

Title: Robert & Joyce Balzer, ATs/X-AEs
v. Donald Meier, James Book,
K-B Farms, Inc. & Robert H. Friel,
AEs/X-ATs.

The judgment of the Circuit Court of Boone County
is affirmed

(See attached order.)

LOREN J. STROTZ, Clerk

cc: Robert Balzer
Clark, McGreevy & Johnson, P.C.
Michael F. O'Brien
G. Michael Scheurich
Guyer & Enichen

No. 2-89-0898

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

| | |
|---|---|
| ROBERT BALZER and JOYCE BALZER<br><br>Plaintiffs-Appellants,<br><br>DONALD MEIER, JAMES BOOK,<br><br>K-B FARMS, INS., AND<br><br>ROBERT H. FRIEL<br><br>Defendants-Appellees | ) Appeal<br>) from<br>) Winnebago<br>Circuit<br>)<br>)<br>) No. 84 L 43<br>) Hon. Craig Peterson<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) |

ORDER

Plaintiffs, Robert and Joyce Balzer, appeal from the circuit court's order granting summary judgment for the defendants, Donald Meier, James Book, K-B Farms, Inc., and Robert Friel. The plaintiffs contend on appeal that the court erred by reconsidering its earlier denial of a motion for summary judgment and by granting the motion for

summary judgment on reconsideration. The defendants filed a cross-appeal contending that the court erred in denying their motion for sanctions pursuant to section 2-611 of the Illinois Code of Civil Procedure. Ill. Rev. Stat. 1987, ch. 110, par. 2-611.

Plaintiffs filed a one-count amended complaint alleging damages resulting from the defendants' trespass onto plaintiffs' property. Plaintiffs alleged that the defendants entered upon their property and redirected Beaver creek, a navigable stream, off of their property. Plaintiffs alleged that this was done without their consent and caused them injury. Plaintiffs sought in excess of $100,000 in damages.

Defendants filed a motion for summary judgment which the court denied on August 28, 1987. On February 4, 1988, the defendants filed a second motion for summary judgment relying on deposition testimony of both plaintiffs. On May 13, 1988, the court again denied defendants' motion for summary judgment stating, "If counsel can imagine the

thickness of a human hair, that is the margin by which the motion is denied."

On May 8, 1989, defendants filed a motion to reconsider the denial of their motion for summary judgment. On June 23, 1989, the court granted summary judgment in favor of the defendants. The court stated that "it is clear as a matter of law that the Balzers*** gave the defendants their apparent consent for the rechannelization of the creek." Additionally, the court found that, "There is no genuine issue of material fact as to whether or not the Balzers sustained any damages because it is undisputed that the Balzers suffered no monetary loss or damage as a result of the creek rechannelization." Furthermore, the court stated that, "It is undisputed that the Balzers have failed to mitigate their claimed damages as a matter of law because the only reason that the creek has not been redirected back onto the Balzer property is that the Balzers refused to permit the creek to be restored back to its original condition on their property."

Defendants filed a motion for sanctions pursuant to section 2-611 and the plaintiffs filed a motion for reconsideration of the grant of summary judgment. The court did not conduct a hearing on defendants' motion for sanctions. The court denied both motions on August 11, 1989. Plaintiffs timely filed a notice of appeal from this order, and the defendants cross-appealed from the denial of their motion for sanctions.

Defendants have filed with this court a motion to dismiss plailntiffs' appeal, and we have ordered that it be addressed with the case. Defendants claim that plaintiffs' statement of facts dooes not conform to Supreme court Rule 341 (107 Ill. 2d R.341), and plaintiffs repeately refer to matters not in the record. While we wholeheartedly agree that the plaintiffs' statement of facts is inadequate, we find that dismissal of plaintiffs' appeal would be too harsh a sanction. We do admonish plaintiffs that pro se litigants are required to comply with the same rules of procedure required of attorneys. (In re J. M. (1988), 170

Ill. App. 3d 552, 556.) We also agree that the brief refers to matters not contained in the record. We shall consider only those matters properly presented and contained in the record. See Brazinski v. Transport Service Co. (1987), 159 Ill. App. 3d 1061, 1069.

Defendants next contend that Robert Balzer's appeal should be dismissed because the notice of appeal filed on his behalf is signed by Joyce, a nonattorney. A nonattorney can appear only on his own behalf and there is no exception when a husband and wife relationship exists. (See Chicago v. Witvoet (1973), 12 Ill. App. 3d 654, 655-56.) Therefore, Robert Balzer's appeal is dismissed.

We now consider the claims of plaintiff, Joyce Balzer. Plaintiff first contends that the court erred by reconsidering its denial of summary judgment more than 30 days after the order was entered. Plaintiff contends that section 2-1203 applies and bars this action by the court. This argument is without merit.

Section 2-1203 pertains to motions filed

"after judgment." (Ill. Rev. Stat. 1987, ch. 110, par. 2-1203.) The denial of a motion for summary judgment is an interlocutory order that is not final or appeal able. (Cedric Sprints & Associates, Inc. v. N.E.I. Corp. (1980), 81 Ill. App. 3d 1031, 1032.) An interlocutory order can be reviewed at any time prior to final judgment. (Catlett v. Novak (1987), 116 Ill. 2d 63, 68.) The court did not err by reconsidering the denial of defendants' motion for summary judgment.

Plaintiff's next contention is that the court erred in granting summary judgment in favor of defendants. Plaintiff argues that the issue of consent is factual and, therefore, summary judgment on this point was inappropriate.

Summary judgment is proper "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Ill. Rev. Stat. 1987, ch. 110, par. 2-1005(c); se also Purtill v. Hess (1986), 111 Ill.

2d 229, 240; Steiner v. Marr (1988), 171 Ill. App. 3d 366, 369.) While summary judgment is an efficient and expeditious manner in which to dispose of a lawsuit, it should not be granted unless, when construing the evidence strongly against the moving party, the movant clearly and without doubt is entitled to such relief. Steiner, 171 Ill. App. 3d at 369.

In construing the evidence in the light most favorable to the plaintiffs, there is no doubt that the plaintiffs gave their consent for the work performed on Beaver Creek. Taking into consideration the numerous admissions made by both Robert and Joyce in their depositions and the request to admit facts, it is clear that, while they may not have intended to, they gave their consent for the work to be performed. Robert Balzer admitted that he left the defendants with the impression that his only concern with the work was the possible cost to him.

The Balzers now contend an issue of material fact exists regarding consent. Simply alleging an

issue of material fact exists does not create such an issue. (Peltz v. Chicago Transit Authority (1975), 31 Ill. App. 3d 948, 951.) If no reasonable person could draw different inferences from the facts, there is no triable issue and summary judgment should be granted. (Lumbermans Mutual Casualty Co. v. Pths (1968), 104 Ill. App. 2d 80, 88.) We find from the evidence presneted that no reasonable person could determine that the Balzers did not consent to the work performed. We find that the court did not err in granting summary judgment to the defendants. Due to the resolution of this issue, it is unnecessary to discuss the issue of lack of or failure to mitigate damages.

The final issue is raised by the defendants in their cross-appeal. Defendants claim that the court erred by denying their request for sanctions without a hearing.

This court will not disturb a trial court's determination regarding the assessment of attorney fees unless there is a clear showing of abuse of discretion. (Beno v. McNew (1989), 186 Ill. App.

3d 359, 365.) Whether a hearing on the petition is required depends on the circumstances of the case. (Beno, 186 Ill. App. 3d at 365-66.) This court has held that a section 2-611 petition "must specifically state which statements or pleadings were falsely made and must further specify what fees resulted from such false statements or pleadings." Brandel Realty Co. v. Olson (1987), 159 Ill. App. 3d 230, 236; se also Launius v. Najman (1984), 129 Ill. App. 3d 498, 505.

While defendants" petition in this case sets forth the allegedly false statements made, it fails to specifically set forth what fees resulted from these false statements. Due to this failure, the trial court did not err in denying defendants' petition for fees without a hearing.

The appeal by Robert Balzer is dismissed, and the decision of the circuit court of Winnebago County is affirmed.

Affirmed.

McLaren, J., with Geiger and Inglis, JJ., concurring.

NO. 2-89-0898
APPEAL TO THE ILLINOIS APPELLATE COURT,
SECOND DISTRICT
FROM THE CIRCUIT COURT OF BOONE

ROBERT BALZER AND JOYCE BALZER )
)
PLAINTIFFS-APPELLANTS )
)
VS. ) 84 L
43
DONALD MEIER, JAMES BOOK, )
K-B FARMS, INC., AND )
ROBERT H. FRIEL )
)
DEFENDANTS-APPELLEES )

AFFIDAVIT OF INTENT TO
PETITION FOR LEAVE TO APPEAL

Plaintiff-Appellant Joyce Balzer, appearing pro se, on oath states that she intends to file with the Supreme Court of Illinois a Petition for Leave to Appeal from the decision of the Illinois Appellate Court, Second District, filed in the captioned matter on May 3, 1990.

Respectfully submitted,

Joyce Balzer

Joyce Balzer

Plaintiff-Appellant Pro se

Filed 5/23/90

phone, at least the heart would not have been torn out of the farm."

Joyce Balzer

JOYCE BALZER ET AL, PLAINTIFFS

NOTICE OF FILING

To: Michael J. O'Brien
Clark, McGreevy & Johnson, P.C.
850 North Church Street
Rockford, Il 61105-1201

G. Michael Scheurich
Guyer & Enichen
Suite 400
202 West State Street
Rockford, Il 61101

Please be advised that on the 2nd day of August, 1989, we filed with the Circuit Clerk of the 17th Judicial Circuit, Boone County, Illinois, a Motion

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
(217) 782-2035
October 3, 1990

MS. JOYCE BALZER
1302 COOLIDGE PLACE
ROCKFORD, IL 61107

NO. 70317 - Robert Balzer, et al. (Joyce Balzer, petitioner, v. donald Meier, et al., respondents). Leave to appeal, Appellate Court, Second District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 25, 1990.

NO. 70317

IN THE ILLINOIS SUPREME COURT
FROM THE SECOND JUDICIAL DISTRICT
NO. 2-89-0898

| | | |
|---|---|---|
| JOYCE BALZER | ) | |
| | ) | Appeal from |
| the Circuit Court | ) | of Boone |
| County | | |
| PLAINTIFF-APPELLANT | ) | |
| | ) | |
| VS. | ) | CIRCUIT COURT |
| NO. 84 L 43 | ) | |
| DONALD MEIER, JAMES BOOK, | ) | |
| K-B FARMS, INC., AND | ) | |
| ROBERT H. FRIEL | ) | TRIAL JUDGE: |
| JUDGE CRAIG PETERSON | ) | |
| DEFENDANTS-APPELLEES | ) | |
| | ) | |

MOTION FOR STAY OF JUDGMENT

Joyce Balzer, plaintiff pro se, respectfully presents this application for and moves this Court to enter an order staying the issuance of mandate of the judgment rendered on October 3, 1990, in the above-entitled cause for a reasonaable period of time. This motion is made under the provisions of Section 2101 (f), Title 28, United States Code, to enable plaintiff to apply for and obtain a writ of

certiorari from the Supreme court of the United States.

October 22, 1990.

Respectfully submitted,

Joyce Balzer

Joyce Balzer
Plaintiff pro se

Joyce Balzer
1302 Coolidge Pl.
Rockford, IL 61107

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
(217) 782-2035
October 29, 1990

Ms. Joyce Balzer
1302 Coolidge Place
Rockford, IL 61107

In re: Robert Balzer, et al. (Joyce Balzer, petitioner, v. Donald Meier, et al., respondents).
No 70317

Dear Ms. Balzer:

Enclosed please find a copy of an order entered today by the Illilnois Supreme Court in the above entitled cause.

Very truly yours,

Juleann Hornyak

Clerk of the Supreme Court

JH: lgr
cc: Mr. Michael G. Schuerich
Mr. Michael F. O'Brien
Chief Justice Moran

IN THE
SUPREME COURT OF ILLINOIS

re: Joyce Balzer
v.
Donald Meier, James Book, K-B Farms, Inc. and Robert H. Friel

ORDER

This matter has come for consideration upon the motion Joyce Balzer to stay the mandate of this Court pending appeal or application for certiorari in the United States Supreme Court.

IT IS ORDERED that the mandate of this Court in the above cause is stayed pending the filing of a notice of appeal or an application for certiorari or the expiration of the period within which said application or notice may be filed. if certiorari is applied for or notice of appeal filed, the mandate of this Court shall, upon proof of such fililng being made by affidavit filed with the clerk of this Court, be further stayed pending resolution by the United States Supreme Court of such application of appeal. If no such affidavit is filed, the mandate shall, without further order, issue upon the expiration of the time within which appeal or certiorari may be sought. Filed 10/29/90.

NO. 70317
IN THE ILLINOIS SUPREME COURT
FROM THE SECOND JUDICIAL DISTRICT
NO. 2-89-0898

of Boone County

JOYCE BALZER

PLAINTIFF-APPELLANT

)
)
DONALD MEIER, JAMES BOOK, )
K-B FARMS, INC., AND )
ROBERT H. FRIEL )
)
DEFENDANTS-APPELLEES )
)

MOTION TO STAY MANDATE
TO THE APPELLATE COURT

Plaintiff Pro Se, Joyce Balzer, requests that the mandate in the above captioned case be stayed as application for certiorari in the United States Supreme Court has been made.

Respectfully submitted,

Joyce Balzer

Joyce Balzer
Plaintiff pro se
1302 Coolidge Pl.
Rockford, IL 61107
1/2/91

NO. 70317

IN THE ILLINOIS SUPREME COURT
FROM THE SECOND
JUDICIAL DISTRICT
NO. 2-89-0898

| | | |
|---|---|---|
| JOYCE BALZER | ) | |
| | ) | Appeal from |
| the Circuit Court | ) | |
| | ) | of Boone |
| County | | |
| PLAINTIFF-APPELLANT | ) | |
| | ) | |
| VS. | ) | NO. 84 L 43 |
| | ) | |
| DONALD MEIER, JAMES BOOK, | ) | |
| K-B FARMS, INC., AND | ) | |
| ROBERT H. FRIEL | ) | TRIAL JUDGE: |
| JUDGE CRAIG PETERSON | | |
| | ) | |
| DEFENDANTS-APPELLEES | ) | |
| | ) | |

AFFIDAVIT OF WRIT FILED

ON THE 2ND DAY OF JANUARY, 1991, Plaintiff pro se, Joyce Balzer, hereby made application for Writ of Certiorari to the United States Supreme Court in the above entitled cause.

Respectfully submitted,

Joyce Balzer

Joyce Balzer
Plaintiff pro se

IN THE SUPREME COURT OF
THE UNITED STATES
January Term, 1991
No._____

JOYCE BALZER, PRO SE PETITIONER

V

DONALD MEIER, JAMES BOOK,
K-B FARMS, INC. AND ROBERT H. FRIEL

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT

Appeal from the Illinois Supreme Court

"Appendix B"
(Exhibits)

Joyce Balzer, Pro se
1302 Coolidge Place
Rockford, Illinois
61107

Brad Burt/The Register Star

Joyce Batzer and her children picket the Winnebago County Courthouse Tuesday morning to protest the rechanneling of a Boone County creek

# Mother pickets for justice

## Six kids, mom march to reclaim stolen creek

By Joe Lamb

The Register Star

A woman who said she is fed up with the legal system and government agencies after fighting eight years to reclaim a stolen creek armed her kids with picket signs and took to the streets Tuesday.

"We have not had contact with our own lawyer for over a year," complained an angry Joyce Balzer as she and six of her children marched in front of the Winnebago County Courthouse with picket signs demanding "Justice for the Small Fry."

Balzer said her family is protesting lack of action in Boone County courts on a lawsuit pending since 1984 and involving a rechanneling of Beaver Creek near Poplar Grove.

Balzer's Rockford attorney, John Newton, said he hadn't "heard from her in about eight months, and as a matter of fact, I've sent her several letters that she hasn't answered. It may be just a failure of communication. The letters haven't come back, but maybe her mail got misplaced."

Balzer, a social worker assigned to Muldoon Center in the Rockford school system, said she and her husband, Robert, own property along the meandering creek, which was straightened and rechanneled by neighboring landowners in the late 1970s.

She said the work damaged her property and was done without a proper permit from the state. The Balzers filed suit in U.S. District Court in 1982, but their complaint was dismissed in 1984, apparently after the state granted an after-the-fact permit. The Balzers then filed suit in Boone County.

Balzer said she recently checked on the status of the lawsuit and was told that it was in danger of being dismissed for inactivity. The Boone County circuit clerk's office confirmed that the lawsuit was on a recent "slaughter call" but was continued at the request of an attorney standing in for Newton.

"We're picketing the courthouse here (in Rockford) because this is part of the 17th Judicial Circuit, and somehow we've got to get justice," Balzer said. "If you've got deep pockets, you can fight this sort of thing, but not if you re a family with eight kids."

Balzer was joined in her street protest by children Shari, 17; Mari, 16; Teresa, 14; Sandi, 12; Kim, 11; and Steven, 5. Two other sons, John, 9, and David, 8, were to join the picket line later.

Exhibit 2

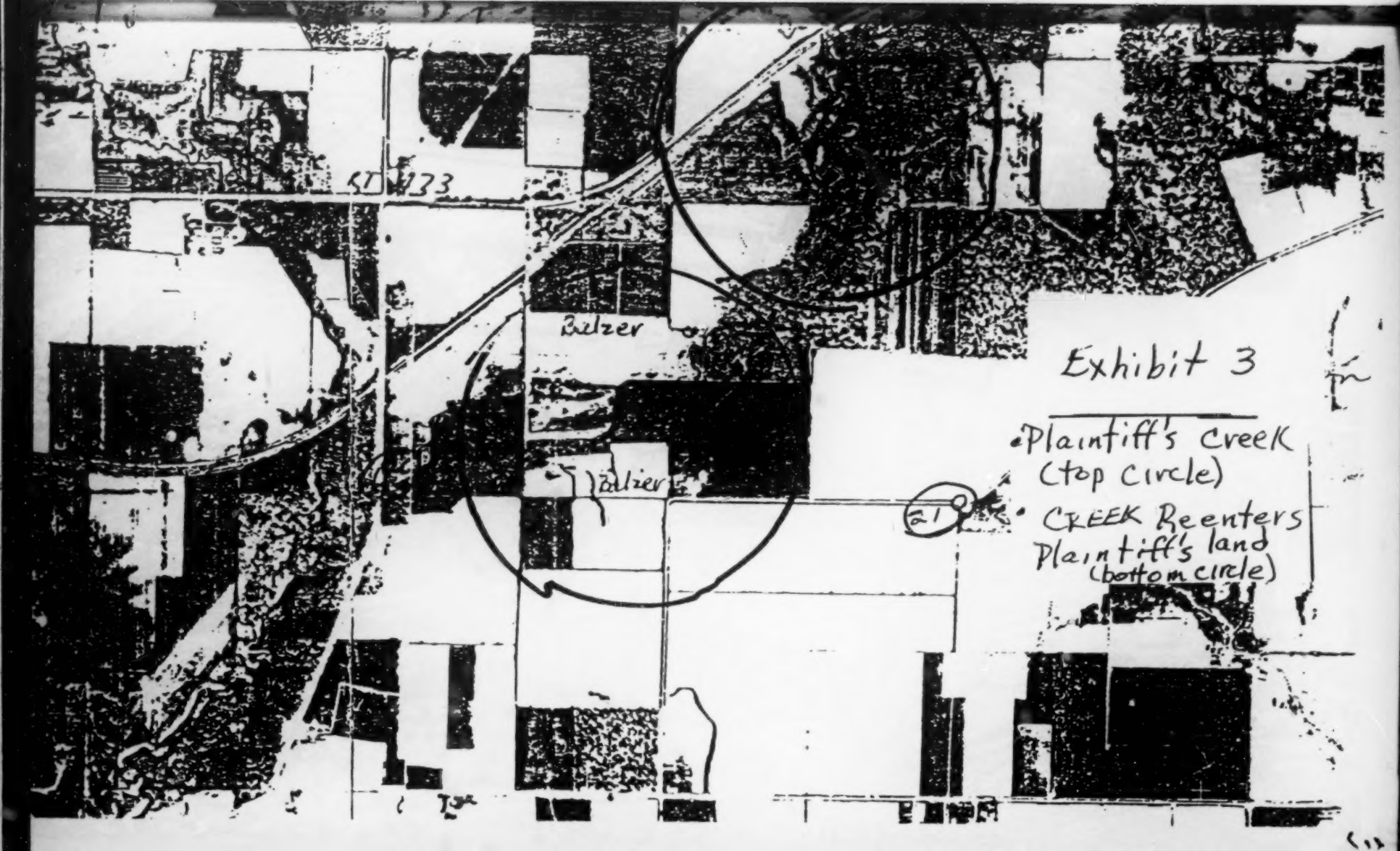


Exhibit 3

- Plaintiff's Creek (top circle)
- CREEK Reenters Plaintiff's land (bottom circle)

Exhibit 4
After
Rechannelization
• No Creek (Top)
• Flood Plain (Bottom)

Exhibit 5

could be secured by Jersey as a second mortgage to your existing first mortgage on the property in as much as the refurbished property value would far exceed the mortgages." In its May 23 letter, Jersey first advised Williams that Williams' mortgage had been placed in foreclosure. Jersey also wrote that it did not extend rehabilitation loans or second mortgage loans.

After the April 18 notification, Williams discontinued his rehabilitation work on the property. Williams attempted to get money from other lenders, but was unsuccessful "because of the Jersey Mortgage credit information which shows slow paying on the loan." On May 29, 1984, Jersey filed a complaint for mortgage foreclosure against Williams.

Williams subsequently filed a two-count counterclaim against Jersey, charging Jersey with breach of an oral contract and fraudulent misrepresentation, and an affirmative defense based on the breach of the oral contract claim. Jersey moved for summary judgment on July 30, 1986. On November 3, 1986, Williams filed an affidavit.

Although Williams was unable to supply the terms of the alleged additional financing when he gave his deposition in April of 1985, Williams clearly supplied such terms in his November 1986 affidavit. Williams' affidavit stated that [illegible]

moving party and liberally in favor of the opponent (*Killeen v. R.W. Dunteman Co.* (1979), 78 Ill.App.3d 473, 475, 33 Ill.Dec. 930, 397 N.E.2d 436) show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law (*Fooden v. Board of Governors* (1971), 48 Ill.2d 580, 586, 272 N.E.2d 497). A court of review will not reverse an order granting summary judgment unless it finds that a material question of fact is present and that the moving party is not entitled to judgment as a matter of law. *Estate of Kern v. Handelsman* (1983), 115 Ill.App.3d 789, 793, 71 Ill.Dec. 407, 450 N.E.2d 1286.

Furthermore, summary judgment is an appropriate procedure for a court to use in construing the legal principles of a contract. (*Village of Rosemont v. Lentin Lumber Co.* (1986), 144 Ill.App.3d 651, 659, 98 Ill.Dec. 470, 494 N.E.2d 592.) In the present case, therefore, summary judgment in favor of Jersey will not be reversed unless a material question of fact exists and Jersey is not entitled to judgment as a matter of law.

[1] Williams' affidavit cannot be used to contradict his prior deposition testimony and place material facts in issue [illegible]

Exhibit 6

vember 3, 1986, Williams filed an affida-

Although Williams was unable to sup- the terms of the alleged additional fi- cing when he gave his deposition in il of 1985, Williams clearly supplied h terms in his November 1986 affidavit. liams' affidavit stated that the amount he mortgage would be "for the amount ssary to do the rehabilitation to a 3- building," "the second mortgage would along with the first mortgage as to est and terms of repayment," and the rest on the second mortgage would be e V.A. market at that time." Despite ams' November 3 affidavit, Jersey's on for summary judgment was grant- On December 22, 1986, Williams filed e of this appeal.

purpose of summary judgment is not cide issues of fact but to determine ier any genuine issue of fact exists. s v. *Formfit Co.* (1966), 35 Ill.2d 533, 21 N.E.2d 633.) A motion for sum- judgment is properly granted if the ngs, depositions and admissions on gether with any affidavits and exhib- hen construed strictly against the versed unless a material question of fact exists and Jersey is not entitled to judgment as a matter of law.

[1] Williams' affidavit cannot be used to contradict his prior deposition testimony and place material facts in issue. When a party makes admissions which are so "deliberate and unequivocal as to matters within its knowledge," those admissions will conclusively bind that party and that party will be unable to later contradict those admissions. (*Baker-Wendell, Inc. v. Cohon & Associates, Ltd.* (1981), 100 Ill. App.3d 924, 929, 56 Ill.Dec. 237, 427 N.E.2d 317.) This rule is well accepted in summary judgment cases. (See *Schmahl v. A.V.C. Enterprises, Inc.* (1986), 148 Ill. App.3d 324, 102 Ill.Dec. 15, 499 N.E.2d 572; *Smith v. Ashley* (1975), 29 Ill.App.3d 932, 332 N.E.2d 32; *Fountaine v. Hadlock* (1971), 132 Ill.App.2d 343, 270 N.E.2d 222.) The judicial policy behind this rule is that once a party has given sworn testimony, he should not be allowed to commit perjury and change his testimony so as to avoid the consequences of his prior testimony. *Smith v. Ashley* (1975), 29 Ill.App.3d 932, 935, 332 N.E.2d 32.

found in Court file 6/89

Form 1.1 – NOTICE

EXHIBIT 7

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL C

BOONE COUNTY, ILLINOIS

Robert Balzer and
Joyce Balzer,

Plaintiff

VS.

Donald Meier, James Book,
K-B Farms, Inc., and
Robert H. Friel,

Defendant

AT LAW

No. 84 L 43

FILED
BOONE COUNTY, ILLINOIS
DEC 6 - 1988
Clerk of the Circuit Court

# NOTICE

TO Atty. Michael F. O'Brien
850 N. Church St.
Rockford, IL 61103

Atty. G. Michael Scheurich
202 W. State St., #400
Rockford, IL 61101

Atty. Gary R. Kardell
401 W. State St., #400
Rockford, IL 61101

YOU ARE HEREBY NOTIFIED, that on the 9th day of December A.D. 19 88, at 1:30 o'clock P M., or as soon thereafter as Counsel may be heard, I shall appear before his Honor, Judge presiding in the room usually occupied by him as a Court Room, or in his absence, before any other Judge that may be presiding in said Court Room, in the Court House in Boone County at Belvidere Illinois, and then and there:

conduct status hearing to obtain pre-trial date.

...T – NOTICE ... Perfection ...al Forms &

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CI

BOONE COUNTY, ILLINOIS

ROBERT BALZER and JOYCE BALZER,

Plaintiff

VS.

DONALD MEIER, JAMES BOOK, K-B FARMS, INC., and ROBERT H. FRIEL,

Defendant

No. 84 L 43

FILED
BOONE COUNTY ILLINOIS
MAY 8 1989
Julie M. Klein
Clerk of the Circuit Court

# NOTICE

TO Gary Kardell, Esq.
Suite 400
401 W. State St.
Rockford, IL 61101

G. Michael Scheurich, Esq.
Suite 400
202 W. State St.
Rockford, IL 61101

John J. Newton, Es
Suite 202
910 Second Ave.
Rockford, IL 61108

YOU ARE HEREBY NOTIFIED, that on the 19th day of May A.D. 19 89, at 2:30 o'clock PM., or as soon thereafter as Counsel may be heard, we shall appear before his Honor, Judge K. Craig Peterson in the room usually occupied by him as a Court Room, or in his absence, before any other Judge that may be presiding in said Court Room, in the Court House in Winnebago County at Rockford, Illinois, and then and there: present a Motion for Reconsideration of Motion for Summary Judgment and in addition for a pretrial conference previously requested by the plaintiffs.

4

78

# REPORT OF ACREAGE

determine eligibility for assis
cannot be provided. The data

| FARM NO. | NAME AND ADDRESS | FARM LAND | CROP LAND |
|---|---|---|---|
| 254 | ROBERT BALZER | 112 | 89 |
| 11 | | D-6 | |
| 00 | | | |

OPERATOR

OWNER

PROGRAM YEAR 1979

OTHER

| KEY | |
|---|---|
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |

ON I - FARM FIELD REPORT (NOTE: Gray Shaded Area to be Filled in by Reporter ONLY.)

| FIELD NO. (2) | CROP OR LAND USE (3) | CROP OR LAND USE SUMMARY: S.A | Corn | Beans | Hay/Past | | | NCA | KEY (5) | SH |
|---|---|---|---|---|---|---|---|---|---|---|
| A2 | (Seeding) Set Aside | 5.2 | | | | | | 5.2 | | |
| | | 5.2 | | | | | | 5.2 | | |
| A1 | Corn | | 22.0 | | | | | 22.0 | | |
| | | | 22.0 | | | | | 22.6 | | |
| B | Corn | | 1.6 | | | | | 1.6 | | |
| | | | 1.6 | | | | | 1.6 | | |
| F | Corn | | 3.0 | | | | | 3.0 | | |
| | | | 3.0 | | | | | 3.0 | | |
| C | 2'-.5 Beans | | | 35.9 | | | | 35.9 | | |
| | | | | 35.9 | | | | 35.9 | | |
| E. | Corn | | 13.7 | | | | | 13.7 | | |
| | | | 13.7 | | | | | 13.7 | | |
| G | (Seeding) Set Aside | 2.0 | | | | | | 2.0 | | |
| | | 2.0 | | | | | | 2.0 | | |
| D1 | (Seeding) Set Aside | 2.2 | | | | | | 2.2 | | |
| | | 2.2 | | | | | | 2 2 | | |
| C2 | Pasture | | | | 6.2 | | | | | |
| | | | | | | | | | | |
| L OPERATOR REPORT | | 9.4 | 40.3 | 35.9 | 6.2 | | | 85.6 | | |
| L REPORTER'S REPORT | | 9.4 | 40.3 | 35.9 | 6.2 | | | 85.6 | | |

ION II - OPERATOR'S CERTIFICATION NC 2 - 85.6

ly to the best of my knowledge and belief that the acreages of crops and land uses herein are true and correct. Further, my signature constitutes authority for ASCS nel to enter my farm for making any program determinations.

OPERATOR'S SIGNATURE Robert H.

Exhibit
9

36.2 1.1 10

USDA - ASCS

# REPORT OF ACREAGE

NOTE: Section 374 of the Agricultural Adjustment Act of 1 will be used to determine eligibility for assistance. Fa provided. The data may be furnished to any agency i

| 2. TRACT NO. | 3. FARMLAND | CROPLAND | 4. PROGRAM YR | KEY | NAMES O |
|---|---|---|---|---|---|
| 970 | 112 | 92.3 | 87 | | |

ERATOR NAME AND ADDRESS
ROBERT BALZER

5. Other Farms

LEGAL DESCRIPTION

| LD | CROP OR LAND USE | Prac-tice 1/ | CROP STATUS 2/ | 16. CROP OR ACR | CORN | OATS | WHEAT | SOY |
|---|---|---|---|---|---|---|---|---|
| | 13 | 14 | 15 | | | | | |
| | Soybeans | NI | I | | | | | 1. |
| | Soybeans | " | " | | | | | 3 |
| | Corn | " | " | | 36.4 | | | |
| | Pasture | " | " | | | | | |
| | Pasture | " | " | | | | | |
| | Soybeans | " | " | | | | | 1 |
| H | Soybeans | " | " | | | | | 1 |
| | of Clu 5-1 N.R. Oats | " | " | 9.1 | | | | |
| | | | | | | | | |
| ERATOR REPORT | | | | 9.1 | 36.4 | | | 36 |
| TERMINED ACREAGE | | | | | | | | |

'S CERTIFICATION - I certify to the best of my knowledge and belief that the acreage of crops and land uses li inaccurate acreage report could result in a payment reduction or loss of program benefits and/or reduction in fu

| IGNATURE | DATE | OPERATOR'S SIGNATURE | DATE | OPERATOR' |
|---|---|---|---|---|
| R. Balzer | 6-19-87 | | | |

Exhibit 10

Boone County and having effects in Winnebago County:

Illinois Dept. of Conservation

1) 26 species of fish, including small mouth bass, crappie, rock bass, and bullhead: 541 lbs. of fish per acre.

2) 10-15 acres of wetlands which provided habitat for waterfowl, fur bearers and fish spawning.

3) 90% reduction in fisheries diversity.

4) Terrestrial wildlife substantially reduced.

5) Beaver Creek is a tributary to Pierce Lake. There is danger of increased siltation of the lake.

6) Severe degradation of 5,600 feet of natural stream.

U.S. Department of the Interior
(Fish and Wildlife)

"Fish found included small mouth bass, rock bass, crappie, and bullhead. It is not unlikely that the stream also serves as a nursery area for fish of the Kishwaukee River. Channelization of the stream destroyed pool and riffle habitat important for food and shelter to the aquatic resource. The project also removed riparian vegetation which has bearers, and a shade and nutrient source for the stream. The southern quarter remains unfilled but livestock are using the area for watering, thus limiting the value for wildlife."

Exhibit II In short, a real ecological massacre occurred. Is t Exhibit II =

IN THE SUPREME COURT OF
THE UNITED STATES
January Term, 1991
No._____

JOYCE BALZER, PRO SE PETITIONER

v

DONALD MEIER, JAMES BOOK,
K-B FARMS, INC. AND ROBERT H. FRIEL

TION FOR A WRIT OF CERTIORARI TO SUPREME COURT

peal from the Illinois Supreme Court

"Appendix"

Joyce Balzer, Pro se
1302 Coolidge Place
Rockford, Illinois
61107

(Public Official's Deposition)

A. 15831 Meier Road, Poplar Grove, Illinois.

Q. Meier Road is spelled the same as your name?

A. Yes.

Q. M-e-i-e-r, is that correct?

A. Yes.

Q. How long have you resided at that address?

A. Since 1946.

Q. This was on the farm that your father and mother initially operated?

A. Yes.

Q. And now you operate?

A. Yes.

Q. Do you own all of the land that now comprises the farm?

A. Yes.

Q. And did you own all of that land in 1979 other than the land which was subsequently purchased from Mr. Friel?

A. Yes.

Q. What is your education, sir?

A. High school.

Q. You are presently a member of the Boone County Board of Supervisors?

A. Fourteen years.

Q. And what committees have you served on in those 14 years?

A. All of the committees.

Q. What are the regular standing committees?

A. Finance, taxation, capital improvement, public safety. The committees have changed over the years.

Q. Any committees that deal with zoing or land use?

A. Yes.

Q. Any committees dealing with coordination with other governmental agencies?

A. Yes.

Q. You are now and have been familiar with the Environmental Protection Agency of the United States Government, are you not?

A. Yes.

Q. And you are now and have been familiar with the Department of Transportation for the State of

Illinois as weell as the Department of Conservation?

A. Yes.

Q. You are also familiar with the Army Corps of Engineers, are you not?

A. Vaguely.

Q. Have you ever had occasion to sit on any committee or other board to approve or disapprove of work on land within Boone County which required the change of the natural habitat or environment?

A. Yes.

Q. As a result of that experience or experiences were you aware that there are approvals that must be obtained, both State and Federally, for such projects.?

A. Yes.

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF BOONE, ILLINOIS

| | | |
|---|---|---|
| ROBERT BALZER and JOYCEE BALZER, Plaintiffs, | ) | |
| v. | ) | 84 L 43 |
| DONALD MEIER, JAMES BOOK, K-B FARMS, INC., AND ROBERT H. FRIEL, DEFENDANTS. | ) | COMPLAINT |

NOW COMES Plaintiffs, ROBERT BALZER and JOYCE BALZER, husband and wife, by th eir attorney, JOHN J. NEWTON, and as and for the claim states as follows:

1. The Plaintiffs reside at 1302 Coolidge, Rockford, Illinois and are the record owners of property located in Boone County, Illinois.

2. That Defendant, DONALD MEIER, is an adult resident of Boone County, residing at 15831 Meier Road, Poplar Grove, Illinois.

3. That Defendant, JAMES BOOK, is an adult resident of McHenry County, residing at 22701 Bunker Hill Road, Harvard, Illinois.

4. That Defendant, R. Robert Funderburg, is an adult resident of Boone County, residing at 530 1/2 South State Stree, Belvidere, Illinois, and

that he is an officer and director of the corporate Defendant, K. B. FARMS, INC., which is the owner of certian property located near or adjacent to that of the Plaintiffs in Boone County, Illinois, adjacent to that of the Plaintiffs in Boone County, Illinois, upon which land K. B. FARMS, INC., a corporation, conducts or transacts business and had done so at all times material hereto, that business being the farming business.

5. That Defendant, ROBERT H. FRIEL, is an adult resident of Boone County, residing at 7818 Route 173, Poplar Grove, Illinois.

6. That there is a navigable stream or river known as Beaver Creek which flows across the property owned by plaintiffs asafore mentioned.

7. That from a point south of Illinois Route 173 and across land owned by Defendants, DONALD MEIER, JAMES BOOK, K. B. FARMS, ROBERT H. FRIEL, and Plaintiffs, the navigable stream flowed without any unnatural restriction of any nature.

8. That subsequent to August 1, 1979, Defendants, jointly and severally, commenced work

upon their lands which included the channeling of new artificial channels and damming of Beaver Creek, redirecting Beaver Creek into the new channels, dredging portions of Beaver Creek, and dumping dredge or fill material into the waters of such creek without obtaining any local, county, state, or federal permit.

9. That as a direct and proximate result of the aforesaid wrongful acts and omissions of said Defendants, DONALD MEIER, JAMES BOOK, R. ROBERT FUNDERBURG, on his own behalf and as agent and servant of K. B. FARMS, INC., and ROBERT H. FRIEL, a portion of Beaver Creek which had previously run across portions of the property of the Plaintiffs herein was caused to be dried up, and other portions of Beaver Creek which ran across and upon the Plaintiffs' property had been adversely affected by the deposit of additional silt, sludge, effluent, and increased velocitty in the water flow in Beaver Creek, causing erosion of land of the Plaintiffs.

10. That the work by the Defendants

proceeded notwithstanding notice by the Illinois Department of Transportation, Divilsion of Water Resources and the United States Army Corps of Engineers to cease construction of such channels and diverting of such water.

11. That the Plaintiffs, as a direct and proximate result of the aforesaid wrongful acts and omissions of the Defendants, and each of them, have sustained damage to their property consisting of the diversion of Beaver Creek off portions of their property and the lessening of the water quality of Beaver Creek.

WHEREFORE, Plaintiffs request that judgment be entered in an amount in excess of one hundred thousand dollars.

Plaintiffs request trial by jury.

ROBERT BALZER and JOYCE BALZER

Plaintiffs by their attorney,

JOHN J. NEWTON

Prepared by:
JOHN J. NEWTON
ATTORNEY AT LAW
910 Second Avenue
202 Freeman Square
Rockford, Illinois 61108
Tele. (815) 964-8800

DEMAND FOR A JURY

---

In the Circuit Court, 17th Judicial Circuit, Boone County, Illinois

ROBERT BALZER AND JOYCE BALZER

Plaintiff(s)

vs.

DONALD MEIER, JAMES BOOK, R. ROBERT FUNDERBURG, K. B. FARMS, INC. AND ROBERT H. FRIEL

Defendant(s)

The plaintiff(s) in the above entitled ccause demand a jury for the trial of said cause.

ROBERT BALZER

JOYCE BALZER

By JOHN J. NEWTON

THEIR ATTORNEY

STATE OF ILLLNOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

ROBERT BALZER and
JOYCE BALZER,
Plaintiffs,

vs.

DONALD MEIER,
JAMES BOOK, R. ROBERT FUNDERBURG
K. B. FARMS, INC., and
ROBERT H.
FRIEL

Case No. 84 L 43

Defendants

AMENDED COMPLAINT

NOW COMES Plaintiffs, ROBEERT BALZER and JOYCE BALZER, husband and wife, by their attorney, JOHN J. NEWTON, and as and for the claim states as follows:

1. The Plaintiffs reside at 1302 Coolidge, Rockford, Illinois and are the record owners of property located in Boone County, Illinois.

2. That Defendant, DONALD MEIER , is an adult resident of Boone County, residing at 15831 Meier Road, Poplar Grove, Illinois.

3. That Defendant, JAMES BOOK, is an adult

resident of McHenry County, residing at 22701 Bunker Hill Road, Harvard, Illinois.

4. That corporate Defendant, K. B. FARMS, INC., is the owner of certain property located near or adjacent to the Plaintiffs in Boone County, Illinois, and such corporation conducts or transacts business at that site and at all times material hereto has conducted such farming business as aforementioned.

5. That Defendant, ROBERT H. FRIEL, is an adult resident of Boone County, residing at 7818 Route 173, Poplar Grove, Illinois.

6. That there is a navigable stream or river known as Beaver Creek which flows across the property owned by plaintiffs asafore mentioned.

7. That from a point south of Illinois Route 173 and across land owned by Defendants, DONAL MEIER, JAMES BOOK, K. B. FARMS, ROBERT H. FRIEL, and Plaintiffs, the navigable stream flowed without any unnatural restriction of any nature.

8. That subsequent to August 1, 1979,

Defendants, jointly and severally, commenced work upon their lands which included the channeling of new artificial channels and damming of Beaver Creek, redirecting Beaver Creek, and dumping dredge or fill material into the waters of such creek without first obtaining any local, county, state or federal permit.

9. That the channelizatiion of Beaver Creek, aforementioned was done without permission of Plaintiffs.

10. As a result of the conduct on behalf of the Defendants aforementioned they have trespassed upon the land owned by Plaintiffs by redirecting the creek that naturally flowed through the property, as a result of such trespass, Beaver Creek which had previously run acorss the portions of the Plaintiffs propety has now ceased to do so. Such cesation has adversely affected the enjoyment of the land by Plaintiffs and further has adversely been affected by the deposit of the silt, sludge, effluent and has increased the velocity of the channelization portion of the creek to cause direct

erosion of the land owned by the Plaintiffs.

11. That the work by the Defendants proceeded notwithstanding notice by the Illihnois Department of Transportation, Division of Water Resources and the United States Army Corps of Engineers to cease construction of such channels and diverty of such water.

12. That the Plaintiffs, as a direct and proximate result of the aforesaid wrongful acts and omissions of the Defendants, and each of them, have sustained damage to their property consisting of the diversion of Beaver Creek off portions of their property and the erosion of their property and the sessenting of the water quality of Beaver Creek.

WHEREFORE, Plaintiffs request that judgment be entered in an amount in excess of one hundred thousand dollars.

Plaintiffs request trial by jury.

ROBERT BALZER and JOYCE BALZER

by their attorney,

JOHN J. NEWTON

Prepared by:
JOHN J. NEWTON
ATTORNEY AT LAW
910 Second Avenue
202 Freeman Square
Rockford, Illinois 61108
Tele. (815) 964-8800
10:016

Judge Robert J. French

STATE OF ILLLNOIS
IN THE CIRCUIT COURTT
COUNTY OF BOONE

ROOBERT BALZER AND JOYCE BALZER,

Plaintiffs,

AT LAW

-vs-

CASE NO. 84 L 43

DONALD MEIER, JAMES BOOK, R. ROBERT FUNDERBURG, K-B FARMS, INC., AND ROBERT H. FRIEL,

Defendants.

O R D E R

THIS MATTER coming on for hearing beforeme, the undersigned judge, on February 28, 1985, on the Motion of the plaintiffs for change of venue to anoter county; the plaintiff, JOYCE BALZER appearing in person, and both plaintiffs appearing by their attorney, John j. Newton; the defendants appearing by their attorneys, Guyer, Enichen, Mayfield & Scheurich; and the Court having heard the arguments of counsel and being fully advised in the premises;

IT IS ORDERED that plaintiffs' Motion for Change of Venue be and the same is hereby denied.

Dated: March 28, 1985

ENTER:

Robert J. French

Judge

Read and approved by undersigned:
John J. Newton, Attorney for
Plaintiffs

G. Michael Scheurich, Attorney
for Defendants
Prepared by:
G. MICHAEL SCHEURICH
Guyer, Enichen, Mayfield & Scheurich
401 West State Street, Suite 202
Rockford, Illinois 61101
(815) 965-8775

Filed 3/28/85

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

Case No.: 84 L 43

ROBERT BALZER and )
JOYCE BALZER, )
Plaintiffs, )
)
-vs- )
)
DONALD MEIER, )
JAMES BOOK,) )
K. B. FARMS, INC., and )
ROBERT H. FRIEL, )
Defendants )

MOTION FOR SUMMARY JUDGMENT

COME NOW, the Defendants above-named by their attorneys Guyer & Enichen, by G. Michael Scheurich, and pursuant to Sec. 2-1005 of the Illinois Code of Civil Procedure, move the Court for entry of summary judgment in favor of the Defendants and against the Plaintiffs as to all of the relief sought against all of the Defendants.

Plaintiffs Amended Complaint alleges a trespass, if it alleges any action at all, and the necessary element of trespass is lack of permission by the owner of the land. The attached affidavit

of the Defendant, Donald Meier, establishes permission by the owner of the land. The attached affidavit of the Defendant, DONALD MEIER, establishes permission by Plaintiff, ROBERT BALZER, owner of the land, thereby vitiating Plaintiffs alleged cause of action.

WHEREFORE, Defendants pray that Plaintiffs Amended Complaint be dismissed with prejudice at Plaintiffs costs.

DONALD MEIER, JAMES BOOK, K-B FARMS, INC., and ROBERT FRIEL,
Defendant's
By: Michael Scheurich

Prepared by
G. MICHAEL SCHEURICH
Guyer & Enichen
202 West State Street, Suite 400
Rockford, Illinois 61101
(815) 965-8775

FILED JULY 28, 1987

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

Case No.:
84 L 43

ROBERT BALZER and )
JOYCE BALZER )
Plaintiffs )
-vs- )
)
DONALD MEIER, )
JAMES BOOK, )
K-B. FARMS, INC., and )
ROBERT H. FRIEL, )
Defendants )

AFFIDAVIT IN SUPPORT
OF MOTION FOR SUMMARY

DONALD MEIER, being first duly sworn on oath deposes and says that he is one of the Defendants in the above entitled actilon and further states as follows:

1. He personally engaged in conversations with the Plaintiff, ROBERT BALZER, owner of the real estate herein involved.

2. Prior to the commencement of work of straigtening Beaver Creek, he notified Plaintiff, ROBERT BALZER, of the Defendants intentions and was granted permission by the Plaintiff, ROBERT BALZER, who responded to the proposal to straighten Beaver

Creek in words substantially similar to the following "It sounds fine to me, but I won't pay more than $1200 for my share of thejob".

3. After receiving such permission from Plaintiff, ROBERT BALZER, the Defendants commenced the work of straightening Beaver Creek and prior to the substantial completion of the dam and new channel of Beaver Creek, and complete re-direction of water flow, were never informed by the Plaintiffs or either of them that the permission given by ROBERT BALZER had been revoked, rescinded, or modified.

4. If called as a witness herein, your affiant would testify as above set forth and would be and is competent so to do.

FURTHER AFFIANT SAYET NOT.

Donald Meier

SUBSCRIBED AND SWORN to before
me this 28th day of july, 1987.

Notary Public

FILED JULY 28, 1987

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

ROBERT BALZER, being first duly sworn on oath deposes and says that he is one of the Plaintiffs in the above-entitled action and further states as follows:

1. He personally engaged in a single conversation with the Defendant, Donald Meier, by telephone in October of 1979.

2. The telephone conversation took place by me at my home.

3. I am the owner of the real estate which is the subject of the above-encaptioned matter, but that such real estate was located in Boone County rather than in Winnebago County, where I reside.

4. The telephone call in the basement of my home. At the time the phone call was placed, my wife was at school obtaining additional credits while I cared for the children.

5. The Defendant, Donald Meier, asked whether or not permission could be granted for work

to be done upon my land, for the cannelization of Beaver Creek. To the best of my recollection I responded, "I can't get involved with it." "I am not able to do anything on my farm at the present time or at any time." "I have no money and my wife is in school, therefore I can not be part of anything that you intend to do."

6. I came upon the land in January of 1980, to discover exactly what they were doing to the property. Prior to that time, I at no time granted any one any permission to come upon my land for the canelization of Beaver Creek.

FURTHER AFFIANT SAYET NOT.

Subscribed and sworn to before me this 27th day of July, 1987.

John J. Newton (Seal)

---

Notary Public

10:097

FILED JULY 28, 1987

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

ROBERT BALZER, being first duly sworn on oath deposes and says that he is one of the Plaintiffs in the above-entitled action and further states as follows:

1. He personally engaged in a single conversation with the Defendant, Donald Meier, by telephone in October of 1979.

2. The telephone conversation took place by me at my home.

3. I am the owner of the real estate which is the subject of the above-encaptioned matter, but that such real estate was located in Boone County rather than in Winnebago County, where I reside.

4. The telephone call in the basement of my home. At the time the phone call was placed, my wife was at school obtaining additional credits while I cared for the children.

5. The Defendant, Donald Meier, asked whether or not permission could be granted for work

to be done upon my land, for the channelization of Beaver Creek. To the best of my recollection I responded, "I can't get involved with it." "I am not able to do anything on my farm at the present time or at any time." "I have no money and my wife is in school, therefore I can not be part of anything that you intend to do."

6. I came upon the land in January of 1980, to discover exactly what they were doing to the property. Prior to that time, I at no time granted any one any permission to come upon my land for the channelization of Beaver Creek.

FURTHER AFFIANT SAYET NOT.

Subscribed and sworn to before me this 27th day of July, 1987.

---

Notary Public

10:097

FILED JULY 28, 1987

Q. Let me just step aside, and I don't mean to bagger you at all. In your affidavit -- you have it in front of you. In your affidavit where you say, "The defendant asked whether or not permission could be granted for work to be done upon my land for the channelization for Beaver Creek," you now testify that you told Meier no, but your answer in the affidavit was somewhat less definitive than that.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

CASE NO. 84 L 43

ROBERT BALZER and )
JOYCE BALZER )
Plaintiffs )
-vs- )
)
DONALD MEIER, )
JAMES BOOK, )
K-B. FARMS, INC., and )
ROBERT H. FRIEL, )
Defendants )

O R D E R

THIS CAUSE coming on to be heard on the 28th day of July, 1987, upon the defendants' Motion for Summary Judgment, the plaintiffs being represented in Court by their attorney, John J. Newton, and the defendants being represented in Court by their attorney, G. Michael Scheurich, and the court having heard the arguments of counsel and having examined the documents offered by counsel and being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that defendants' Motiojn for Summary judgment be and the same is hereby denied.

Date: August 28, 1987.

Enter:

Judge Kapala

FILED 8/28/87

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

Case No.:
84 L 43

ROBERT BALZER and )
JOYCE BALZER )
Plaintiffs )
-vs- )
)
DONALD MEIER, )
JAMES BOOK, )
K-B. FARMS, INC., and )
ROBERT H. FRIEL, )
Defendants )

MOTION

COMES NOW the defendant, ROBERT H. FRIEL, by his attorneys, GUYER & ENICHEN, G. Michael Scheurich, and hereby joinsthe Motion for Summary Judgment of the defendants, DONALD MEIER, JAMES BOOK, K. B. FARMS, INC., filed herein on February 3, 1988.

ROBERT H. FRIEL, Defendant

By: Michael Scheurich

Guyer & Enichen
202 West State Street, Suite 400
Rockford, Illinois 61101
(815) 965-8775
FILED FEBRUARY 10, 1988

STATE OF ILLINOIS
CIRCUIT COURT
SEVENTEENTH JUDICIAL CIRCUIT

Atty. Mike O'Brien
850 North Church Street
Rockford, IL 61103

Atty. Michael Scheurich
202 West State #400
Rockford, IL 61101

Attorney John Newton
910 2nd Avenue #202
Rockford, IL 61108

Robert Balzer and Joyce Balzer
v.
Donald Meier, James Book, K-B Farms, Inc., and
Robert H. Friel

MEMORANDUM OF DECISION

I have entered the following order:

Defendant's motion for Summary Judgment heard and denied.

A triable issue precluding summary judgment exists where there is a dispute as to material facts or where reasonable people might draw different inferences from material facts being undisputed. (Cite omitted). In determining whether a genuine issue as to material fct exists, the Court must construe the pleadings, depositions, and affidavits most strictly against the movant and most liberally in favor of the opponent. (Cite omitted). Summary

judgment should be granted only when the party's right to it is clear and free from doubt. (Cite omitted).

After the reviewing the pleadings, affidavits, and after sifting and culling, the depositions three times and finding in particular Mr. Balzer's testimony contradictory, confusing, ambivalent,evasive, and garbled I cannot say that defendants have met this burden.

If counsel can imagine the thickness of a human hair, that is the margin by which the motion is denied.

Very truly yours,

Craig Peterson
Associate Circuit Judge

WRITTEN MAY 13, 1988 AND FILED MAY 13, 1989

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

Case No.:
84 L 43

ROBERT BALZER and )
JOYCE BALZER )
Plaintiffs )
-vs- )
)
DONALD MEIER, )
JAMES BOOK, )
K-B. FARMS, INC., and )
ROBERT H. FRIEL, )
Defendants )

ORDER

THIS CAUSE coming on to be heard on April 12, 1988 upon Defendants' motion for summary judgment, and Plaintiffs, ROBERT BALZER AND JOYCE BALZER, being personally present in court and represented by their attorney, JOHN J. NEWTON, and defendants, DONALD MEIER, JAMES BOOK AND K-B FARMS, INC., being represented in court by their attorney, MICHAEL F. O'BRIEN, and Defendant, ROBERT H. FRIEL, being represented in court by his attorney, G. MICHAEL SCHEURICH, and the court having heard the testimony of Plaintiffs and statements of counsel, and being fully advised in the premises;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' motion for summary judgment be and the same is hereby denied.

Date: _____

ENTER:

Judge Craig Peterson

Read and approved:

---

Attorney Michael F. O'Brien

---

Attorney G. Michael Scheurich

---

Attorney John J. Newton

Prepared by;

John J. Newton, Esq.
202 Freeman Square
910 Second Avenue
Rockford, Illinois 61104-2186
815-964-8800

NOT SIGNED--FOUND IN FILE RETURNED BY FORMER COUNSEL; WAS FILED BY PLAINTIFF AUGUST 25, 1989.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT
COUNTY OF BOONE

Case No.:
84 L 43

ROBERT BALZER and )
JOYCE BALZER )
Plaintiffs )
-vs- )
)
DONALD MEIER, )
JAMES BOOK, )
K-B. FARMS, INC., and )
ROBERT H. FRIEL, )
Defendants )

MOTION FOR RECONSIDERATION OF
MOTION FOR SUMMARY JUDGMENT

The defendants, Donald Meier, James Book and K-B Farms, Inc., by their attorneys, Clark, McGreevy & johnson, P.C., move for reconsideration of their previously filed motion for summary judgment and in support thereof state the following:

1. Although the court has previously ruled that there is a general issue of material fact as to whetheer or not the plaintiffs, Robert and joyce Balzer ("the Balzers"), consented to the trespass upon their property, the Court did not

specifically address the additional issue raised by the original motion for summary judgment, which was whether or not the Balzers had any viable claim for damages.

2. The Balzers have admitted that they suffered no actual damages as a result of the alleged trespass, and it is also undisputed that, although the creek was diverted from their property, the only reason it remains in that condition is because the Balzers refused the defendants' offer to restore the flow onto their property in the original channel in accordance with the permit granted by the United States Corps of Engineers.

3. The Balzers have failed to mitigate by refusing to permit the restoration of the flow and therefore as a matter of aw have no claim for damages.

WHEREFORE, the defendants, Donald Meier, James Book and K-B Farms, Inc., move for summary judgment for the reason that the plaintiffs, Robert and Joyce Balzer, have no damages and have failed

to mitigate as a matter of law.

DONALD MEIER, JAMES BOOK AND

L-B FARMS, INC., Defendants

By: CLARK, McGREEVY 7 JOHNSON,

P.C.

Their Attorneys

By: Michael O'Brien

One of Their Attorneys

Michael F. O'Brilen
Clark, McGreevy & Johnson, P.C.
850 North Church Street
Rockford, IL 61105-1201
(815) 963-8451

Filed May 8, 1989

May 5, 1989

The Honorable K. Craig Peterson
Associate Judge
Winnebago County Courthouse
400 West State Street
Rockford, IL 61101

Re: Balzer v. Meier, et al
Case No. 84 L 43
In the Circuit Court
of the 17th Judicial
Circuit, Boone
County, Illinois

Dear Judge Peterson:

You will Recall that the plaintiffs' attorney, Jack Newton, and I recently agreed that the renewed summary judgment motion and pretrial conference should take place in fron of you on Friday, May 19, 1989, at 2:30 p.m., which was a time and date that you had suggested. Therefore, I have filed the enclose motion and notice with the clerk in Belvidere, and these copies are for your personal use and as a reminder of the hearing and pretrial conference (to be held in Rockford).

Very truly yours,

Michael F. O'Brien

MOB/ksf

Enclosures

FILED 6/16/89

REBUTTAL OF INTERPRETATION OF BALZER'S DEPOSITION IN DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (March 4, 1988)

After viewing the misinterpretations and general twisting in the Motion for Summary Judgment and was REALLY said on both depositions we prepare this rebuttal...Considering in the excess of (5) hours of grilling by the Counsel we did expect a more accurate interpretation. Be that as it is, we will attempt to examine both the time frame and correct definitions, both of which are essential for correct interpretation..Regarding the time frame and its setting from September, 1979 to January 1, 1980 Robert Balzer, Friel, and Meier were the key players..,Joyce, was not at home when the calls were made...From Jan. 2 to the present the key players have been Joyce Balzer, defendants and agency personnel...

Both Robert and Joyce Balzer disagree adamantly

with Mr. O'Brien's statement on page 8 about damages. Keep in mind the following points:

1. The Balzers have encountered substantial damages by this aggressive act.

2. These damages consist of loss of future home site, recreational area, 15 acres of decreased production land downstream, eight years of being held hostage to approximately $10,000 interest payments for a place where our planning, performance and enjoyment have been so rudely and cruelly interrupted. Add it up, our opinion in excess of $200,000 for actual damages. Continued procrastination will only make the price go higher!!!"

Joyce Balzer

FILED JULY 24, 1989

MOTION FOR REHEARING OF
RECONSIDERATION OF MOTION FOR
SUMMARY JUDGMENT

Joyce Balzer, plaintiff pro se, is herein requesting the Court for a hearing on the Reconsideration of Motion for Summary Judgment that resulted in a judgment order to dismiss the above case May 19, 1989. Since 7/87 and there after, certain events have shaped and threatened the above case which led to its dismissal. Some of the irregularities are set forth as follows:

1. The plaintiffs were NOT made aware of the court activity to reconsider the motion for summary judgment which supposedly took place on May 19, 1989, nor the Order which resulted therefrom, until almost a month later. No notice, no Court Reporter and no written pleadings on their behalf were in the court file as of 6/13/89 and have been confirmed to the plaintiffs as "non-existent"

Likewise, no court reporter was present for any significant court activity on this case since 5/20/87; From 7/87 on there is no record of any defense by their attorney in either the court file or attorney's file.

2. Within the depositiions there exists confusion of the terms rework and channelization (synonymous)--maintaining natural stream be; and confusion of canalization and rechannelization (synonymous)--meaning make new pathways. (World Book Dictionary, 1984; and Webster's Dectionary, 1958)...3. No consent was given to either Meier or Friel...In the judgment order, 1-a, it is very unreasonable, to say nothing about impossible to prove a negative, to think NOT appearing at a meeting at the ASCS office that Robert Balzer showed by his conduct that he gave consent is absurd...4. Regarding damages both depositions maintain we no longer have what we bought! Damages are the price of the farm @ $2500 per acre with compounded interest of 10% since January 1, 1980; pus $10,000 per year per child for decrease in

quality of life and interference with the self-determination of their parents rearing their children in the rural environment originally planned..

5. The charge of failure to mitigate damages is to follow the technical advice given by an hydraulic technician which state 1-2-80 to Joyce Balzer. If the larger, straighter, lower, deeper channel is dammed up to redirect Beaver Creek back into your property you will eventually lose it. The distance between the new channel and the meandering stream is as little as 15ft. "In wet, flooding times the meandering creek will cut its path on the surface to the drainage ditch 27 ft. wide and 5 ft. deep; in dry times the lowered water in the drainage ditch will draw underground waters from the meandering creek." The Corps says what was done cannot be undone; Balzers say they do not have what they bought. There was No self-determination given to the plaintiffs either by the Corps or defendants. Both continued unilaterally in their restoration plans...

Joyce Balzer, Plaintiff

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT

COUNTY OF BOONE, ILLINOIS

| | | |
|---|---|---|
| JOYCE BALZER ON BEHALF OF SHARI, MARI, TERESA, SANDI, KIM, JOHN DAVID, STEVEN AND ROBERT BALZER, | ) | |
| Plaintiffs | ) | |
| V. | ) | 84 L 43 |
| DONALD MEIER, JAMES BOOK, K-B FARMS, INC., AND ROBERT H. FRIEL | ) | |
| Defendants | ) | |

REPLY TO MOTION FOR SANCTIONS PURSUANT TO SECTION 2-611

Joyce Balzer, plaintiff pro se, sets forth the following facts why filing for Rehearing of Reconsideration of Motion for Summary Judgment did NOT violate Section 2-611.

1. Plaintiffs' due process rights were blantantly violated in failing to give adequate and timely notice and failing to provide for right to trial by jury. The central core of due process is that "A person should always have notice and a real chance to present his or her side on a legal dispute and

that no law or government procedure shall be arbitrary or unfair." (Social Work and the Law; p.803 by Brieland and Lemmon, 1977).

2. The Balzers do not "falsely" allege that the "aforesaid work 'was done without permission of the Plaintiffs'." The Balzers state Truthfully that the illegal rechannelization drainage network, devised by the defendants, was done without Mr. Balzer's permission. Three very brief telephone contact calls by Robert Friel and one extremely brief call from Donald Meiers (a nonacquaintance) all talked about reworking or making deeper the existing creek and all received ABSOLUTELY no permission to do ANYTHING! Mr. Balzer's task at hand was feeding his five little girls (ages 5-9), getting them ready for bed or trying to talk above their play on the telephone. After all, he was Substitute Mom while his wife was away a school and caring for their two youngest babies.

3. Also, in #3 of Mr. O'Brien and Mr. Scheurich's Motion for Sanctions against the plaintiffs is INCORRECTLY stated that Mr. Balzer sent a letter to

United States Army Corps of Engineers saying he had agreed to the work (What work? The work talked about in the very brief phone conversations mentioned above or the work of making completely new pathway of a 27'X5'x5280' long drainage ditch intercepting Balzer's creek.) It really does NOT matter what the defense counsels mean--No permission was given for Anything! What page 91-92 of Robert Balzer's Deposition says is: Page 91 (line 22) "Do you recognize that letter?" (Exhibit No. 3) Balzer said "Yes". He recognized the letter. He had not written it. All the letters written after discovery of the Rechannelization were written by Joyce Balzer on either one of two old clunkity typewriters, with only bits and pieces of information since she had not been privy to any of the four brief telephone contacts, with 7 little children all-with their own needs-and pregnant with the 8th child, at a time interval when she was completing an internship back in Rockford at JWMH Clinic and on night shift at Swedish Am. Hospital. Mr. Balzer would sign the correspondence his wife

question and assessment of fees. The plaintiffs, the Balzers, would also like to make the point that they are entitled to a trial so that a jury can scrutinize the lack of permission and the resultant damages of the defendants' aggressive devastation toward their property.

7. Part of the problem may be that the defendants do NOT know what the word permission means. Mr. Meier stated "Yes" in his deposition (Page 6) when asked the question, "As a result of that experience or experiences (Reference to Boone County Board member fuction of approving or disapproving work on land requiring changing natural habitat or environment) were you aware that there are approvals that must be obtained both State and Federally, for such projects?" Mr. Meiers goes on to relate in the same deposition, (Page 7), that "After Jim (Book) and his sons had bought the farm, (east of Balzers), we started making contaacks and talking to the different neighbors, and the ones that were interested went along with the project." Mr. Balzer has repeatedly stated he was NOT

interested, therefore, Mr. Balzer did NOT logically go along with the project. Meiers also believes that the wet farm east of Balzer was purchased BEFORE he had talked with any of the neighbors about "Straightening the creek." (Page 8). What was going to be done had already been decided to be done irregardless of Balzer's imput. Question to Mr. Meier, (Page 11) asks, "Mr. Balzer was not present at that meeting, was he?" Mr. Meier replies, "No, but he was notified of the meeting, as all the people were." Mr. Balzer's conduct of not attending that meeting indicates permission??? Is that really permission? Page 13 states that Friel, the defendant who notified Balzer about the meeting at the ASCS office, did NOT attend the meeting himself. Very interesting. On page 12 Meiers stated, "I called him I think on two different occasions. One time I talked to his wife and he wasn't home at the time, and I called back and talked to Bob and asked to set up a meeting time on site, or over at Robert Friel's rather, the following Sunday...Mr. Balzer never showed up at

Joyce Balzer
Filed 7/24/89

ANSWER TO REQUEST FOR ADMISSION OF FACT AND OF GENUINENESS OF DOCUMENT

Please check records and see where Fields D and G have remained untillable (listed as pasture land) for the past 10 years.

5. Therefore, the complete statement in # 5 is incorrect. Due to flooding propensity after the rechannelization the land has been lying dormant, untillable. On the ASCS Office records Pasture land is listed under the category CU (Cropland Unused). This figures into the cropland total but is not set aside acreage for deficiency payments The las t such payment for the area in question was in 1979, prior to the rechannelization. The only increase in total acreage was South of the Creek (Field E) and does not concern the object of controversy.

Robert and Joyce Balzer

3/27/89

FILED 7/24/89

Appellant Brief

POINTS AND AUTHORITIES

1. A motion to reconsider a judgment falls within the category of post-judgment motions which must be filed within 30 days after the challenged judgment is entered.

Illinois Revised Statutes, as amended, Chapter 110, Section 2-1203 Page 2,3.

Archer Daniels Midland Co. v. Barth, 103 Ill. 2d 536, 538. Page 8.

Sears v. Sears, 85 Ill. 2d 253, 258, 259. Page 8.

2. The utilization of a summary judgment is particularly inappropriate where the inferences which the parties seek to have drawn deal with questions of motive, intent and subjective feelings and reactions.

State Farm Mutual Automobile Insurance Co. v. Short , 125 Ill. App. 2d 97, 106. Page 8.

Schuster v. E. St. Louis Jockey Club, 37 Ill. App. 3d 483, 487. Page 8, 23.

Montgomery Ward & Co. v. Wetzel, 98 Ill. App. 3d 243, 247. Page 8.

State National Bank of Annawan v. Kewanee National Bank, 16 Ill. pp. 3d 272, 274. Page 8.

3. A summary judgment should not be granted if there is a disagreement of any material fact or facts.

Simaitis v. Thrash, 25 Ill. App. 2d 340, 348. Page 9.

Reith v. General Telephone Co., 22 Ill. App. 3d 337, 339. Page 9, 10.

Lundin v. Egyptian Construction Co., 29 Ill. App. 3d 1061, Page 9.

4. A court may not draw inferences of fact on a motion for summary judgment.

State Farm Mutual Automobile Insurance Co. v. Short, 125 Ill. App. 2d 97, 106. Page 10.

5. Depositions may not be utilized in motions for summary judgment or referred to in the pleadings of such motions without having been properly made a part of the court record. Illinois Revised

Statutes, as amended, Chapter 110A, Section 202, Supreme Court Rule 207. Page 8.

Illinois Revised Statutes, as amended, Chapter 110A, Section 202, Supreme Court Rule 207. Page 8.

Bezin v. Ginsburg, 59 Ill. App. 3d 429, 436. Page 10.

6. One's land may not be controlled or affected in anyway by another without a written contract and such owner of land has the self-determination of judgment regarding his land, except under Law of Eminent Domain.

Statute of Frauds, (404 Ill. 362, 89 N.E.2d. 51). Page 14.

Department of Transportation v. Harper, 64 Ill. App. 3d 732, 381 N.E. 2d, 21 Ill. Dec. 516 (1978).

Kugl v. Village of Brookfield (1944), 322 Ill. App. 349, 54 N.E. 2d 92 (1st Dist.).

PETITION FOR LEAVE TO APPEAL

To: The Honorable Justice of the Illinois Supreme Court:

Your Petitioner Joyce Balzer, pro se, hereby petitions this Court for leave to appeal from the decision of the Illinois Appellate Court, Second District, wherein the Court affirmed an order of the Circuit Court of Boone County granting summary judgment against Petitioner and in favor of Respondents, Donald Meier, James Book, K-B Farms, Inc., and Robert H. Friel. Basing their evidence on the fraudulent affidavits and discovery depositions that deponent had no opportunity to have quoted within their context or contradicted with other evidence, they said that Plaintiff R. Balzer gave his consent for the illegal rechannelization, even though the Record on Appeal reflects how Plaintiff Robert Balzer was "set up" for contradiction with the filing of an incorrect affidavit by own counsel and such counsel allowed defense to depose his client with the Corrected Affidavit. Even though it was impossible for

plaintiff to give permission when what even was talked about on the phone did not even transpire. Even though own counsel, under the guise of a Court-ordered name-change, also, fraudulently amended the true nature of the complaint from Rechannelization to Channelization. Defendants' depositions were not permitted to be admitted as evidence on the Record of Appeal. Reality is that plaintiffs did not having access to their file at crucial times and the Record of Appeal does not truly reflect all the evidence, especially the inclusion of defendants' depositions which shows that no consent whatsoever was given. Furthermore, the Appellate Court did not address the contention by plaintiff of legitimately having a right to know who got the money K-B Farms' Insurance Co., under K-B Farms' liability policy, was willing to throw into the pot, as they were so informed by own counsel. The conclusions reached by the Appellate Court are based on fraudulent evidentiary materials found in the Record on Appeal whereby, they ignored the question of fraud raised by plaintiff.

The Appellate Court's opinion was filed on May 3, 1990, and within 21 days thereafter, on May 23, 1990, Petitioner filed a Notice of Intent to Appeal to this Court.

REASONS WHY THIS COURT SHOULD GRANT LEAVE TO APPEAL

This Court should grant leave to appeal in this matter for the following reasons:

1. Plaintiff believes that attorney and judge misconduct consists of dishonesty, fraud, and deceit, and is directly responsible for case dismissal.

2. Plaintiffs' Constitutional Rights, State and Enviornmental Laws were violated by defendants, the perpetrators, sending the message to others that "Might makes Right", causing plaintiffs to suffer damages and hardship by the defendants' illegal acts while defendants continue to reap the profits from draining their wetlands, at others' expense.

3. It is of importance to the State of Illinois

that its citizens be allowed to make property purchases and have them protected in their absences so they may exercise self-determination of such property.

4. It is of importance to the State of Illinois that Summary Judgment not be utilized to deprive its citizens of their constitutional rights of due process by sneakingly dismissing their case and using fraudulent evidentiary materials, placing on them undue hardship of appealing.

5. It is of importance to the State of Illinois that judicial districts avoid practices that cause distrust among the citizens of this State; e.g. "Taking cases under advisement" and then truncating them without the presence of plaintiff, due to lack of notice, especially when there exists an "Imbalance of Power" between parties and when the constitutional right to a jury trial has already been established by a previous judge. Summary judgments should not be allowed on issues already ruled upon, especially when no new evidence regarding that issue has been presented. Such

districts should avoid putting new associate judges in positions of being "hatchet judges" to dismiss cases, thus avoiding politically unattractive decisions for the circuit judges, creating a work load that is impossible to handle justly, and providing the opportunity for "one injustice deserves another." Likewise, appellate judges should be overtly involved in the cases from the district that elected them, rather than politically "playing it safe" by withdrawing from the case. Appellate decisions should do more that repeat Facts uttered by the defense which are in themselves inaccurate. The defense has gone to great lengths to utilize words such as "undisputed and purposely" incorrectly. Such districts should, also, require that cases in a particular county be tried in that county unless venue out of that county be granted by a court order. This should be done so playing "keep away" does not occur with plaintiff's file and there is no shifting of responsibility of what county or who has that file, especially at crucial filing times. Districts

should, also, not allow the files of cases involving county political figures to be housed in their county of office.

6. It is of importance to the State of Illinois that either the 1904 "Daum v. Cooper Law" be enforced or a new one made to protect the citizens of this state from the unlawful rechannelization that robs them of their waterways on their land and cause subsequent flooding downstream back on their lands, if such waterway or creek reenters their land. The people further downstream should be protected from such illegal practices.

7. Fraudulent evidentiary materials in the Record on Appeal consist of INCORRECT AFFIDAVIT (R. C. 45-46) AND CORRECTED AFFIDAVIT (R. C138-139). (N.B. The corrected affidavit was found in counsel's file unsigned.) Proof that it was used by the defense counsel in depositioning plaintiff is on page 63 (Lines 11-18) of Robert Balzer's Deposition.

8. The Appellate Court's decision is in conflict with Supreme Court Rules regarding discovery

depositions used as evidence; specifically Supreme Court Rule 212(c) if only a part of the deposition is read or used the opposing party has a right to insist that all of it is read or used. Also, under Supreme Court Rule 201(i), disclosure of any matter obrained by discovery may be contradicted by other evidence. Denial of a Trial by Jury has suppressed that evidence.

9. The Appellate Court, 2nd District, has placed in conflict the ruling from the Appellate Court of Illinois, Third District in Eisenbrandt v. Finnegan, 509 N.E.2d 1037 (Ill.App.3 Dist. 1987). Also, in conflict from the 4th District are Colwell Systems, Inc. v. Henson, 452 N.E.2d 889 (Ill.App. 4 Dist. 1983 and Klimek v. Hitch , 80 Ill.Dec. 289, 464 N.E.2d 1272 (Ill.App. 4 Dist. 1984).

10. Under Res Ipsa Loquitur the argument that somehow plaintiff is to blame for the rechannelization, e.g. he only gave three reasons for not giving permission to his phone callers instead of a dozen, or he should have gone to that meeting to see what the defendants were up to just

does not "hold water."

STATEMENT OF FACTS:

This is a case whereby plaintiffs, absentee landowners, brought action against a corporation and adjacent landowners in trespass for creek hi-jacking and subsequent flooding back on their property downstream. (R. C1-3). This work, done by K-B Farms Corporation and President of Boone County Board et. al, was done knowingly by their own admission (Defendants' Depositions) without both state and federal permits, though such permits are required for any work to be done on Beaver Creek, which is a federal creek. Plaintiff argues that without the permits and the necessary Public Hearing her and her family's constitutional rights of Equal Protection under the 14th Amendment were violated; likewise, state drainage laws, and local, state and federal environmental laws were violated.

Plaintiff, also, states that she and her family were denied DUE PROCESS OF LAW whereby plaintiffs case was terminated by summary judgment,

Reconsideration of Motion For Summary Judgment.

In that motion the defense concedes that the consent issue has already been dealt with:
"Although the Court has previously ruled that there is a general issue of material fact as to whether or not the plaintiffs, Robert and Joyce Balzer ('the Balzers"), consented to the trespass upon their property, the Court did not specifically address the additional issue raised by the original motion for summary judgment, which was whether or not the Balzers had any viable claim for damages." (R. C104).

Now, what intervening event or additional evidence came into play? The ONLY difference reflected in the Record is that the defense filed a "REQUEST FOR ADMISSION OF FACT AND OF GENUINENESS OF DOCUMENT" (R. C93-95), filed 3/1 89. This document consisted of two exhibits:
Exhibit A: A letter written by Plaintiff Joyce Balzer refusing permission to direct water back

into hi-jacked creek because the drainage ditch was less that 15 ft. from the new established channel. Plaintiffs had been warned by hydraulic technicians about losing their meandering creek over time to the 27 ft. wide x 5 ft. deep x 5,200 ft. long illegally constructed drainage ditch. (R. C96)

Exhibit B: Defense had gone to the Agricultual Stabilization Conservation Service and copied Plaintiff's Crop Land Acreage for the years 1979 (cropland totals preceding the Fall, 1979 Rechannelization; 1982; and 1987.) (R. C97-101) Now, anyone who is familiar at all with those records knows that every farmer's land is divided into fields and the acreage of each field is calculated separately. However, the defense only read the top cropland total for the above years and jumped to the erroneous conclusion that Balzer did not lose acreage but gained it, when the gain did not apply to the 10-year flooded, dormant area but to gains in other fields.

So, essentially the defense's "undisputed" charge that plaintiffs failed to mitigate damages and

though material fact existed on both isssues of consent and damages and should have proceeded to Trial by Jury as requested in timely fashion. (R. C3-4).

Court ordered, 5/15/86, that the Original Complaint be amended to delete the name of K-B Farms Director, Robert Funderburg, (R. C 34); K-B Farms Corporation was retained as defendant. After case went on slaughter call for lack of action and having information that because of who the defendants were, "This case would never come to trial" Plaintiff Joyce Balzer and children picketed the court house for one day June, 1987. (Attached).

Amended Complaint (R. 36-38) filed 7/2/87, was not only changed by plaintiffs' counsel deleting Robert Funderburng's name, but the very nature of the complaint was fraudently changed by own counsel from the true nature of Rechannelization to Channelization.

Motions for Summary Judgments.

Order Denying Summary Judgment II to defendants (R. C107):

Essentially in this Order Associate Judge Peterson said that the defendants have not met the burden whereby: "Summary judgment should be granted only when the party's right to it is clear and free from doubt."

Also, in May, 1988, the following events occurred:

1. Plaintiffs began receiving a computerized billing for $4475. (attached) from counsel, though the case had been taken on contingency for 1/3.
2. Plaintiffs called counsel and set up an appointment to discuss finances.
3. At that meeting counsel said another lawyer had become involved in the case who represented K-B Farms' insurance liability policy. He said this lawyer was saying, You knew about this claim for a long time. Rather than get into a long litigation of declaratory judgment the insurance company was willing to throw some money into the pot. Counsel

then said plaintiffs could bow out and be even attorney fees. Plaintiffs refused. Counsel then said well this case either has to go to trial or settlement. He said he would sit down with the other attorneys and judge and talk about it.

4. The $4475. computerized billing started up again and lasted until May, 1989, when the case was secretly dismissed without notice to plaintiffs.

5. From May, 1988 to 1989 Plaintiff showed up at (2) announced Pre-Trial Conferences, only to find that the Pre-Trial had been cancelled, though it was still on the roster outside the courtroom.

In May, 1989, the record reflects that a Notice (R. C103) dated 5/5/89, (filed 5/8/89), not sent to plaintiffs, but (3) attorneys (O'Brien, Kardell and Schuerich) before Judge Peterson was to be May 19th, 1989 at 2:30 in Winnebago Court House; "present a Motion for Reconsideration of Motion for Summary Judgment and in addition for a pretrial conference previously requested by the plaintiffs." Filed, also, on May 8, 1989 was the Motion For

NO. 70317

IN THE ILLINOIS SUPREME COURT
FROM THE SECOND JUDICIAL DISTRICT
NO. 2-89-0898

| | |
|---|---|
| JOYCE BALZER | ) |
| | ) Appeal from |
| the Circuit Court | ) |
| | ) of Boone |
| County | |
| PLAINTIFF-APPELLANT | ) |
| | ) |
| VS. | ) CIRCUIT COURT |
| NO. 84 L 43 | ) |
| | ) |
| DONALD MEIER, JAMES BOOK, | ) |
| K-B FARMS, INC., AND | ) |
| ROBERT H. FRIEL | ) TRIAL JUDGE: |
| JUDGE CRAIG PETERSON | ) |
| | ) |
| DEFENDANTS-APPELLEES | ) |
| | ) |

MOTION FOR LEAVE TO SUPPLEMENT
PETITION FOR LEAVE TO APPEAL

Petitioner Joyce Balzer, pro se, hereby requests the Supreme Court of the State of Illinois to admit the attached addendum to be considered with the Petition For Leave To Appeal.

Several points contained therein consist of the following facts:

1) Error of dismissal date in the Petition;

2) Violation of Property Rights of Plaintiff;

65

3) Matter of Rockford Mutual Insurance Company's business practices being of concern to the "Public Interest" of the the State of Illinois

Respectfully submitted,

Joyce BalzerPlaintiff-Petitioner pro se

Joyce Balzer
1302 Coolidge Pl.
Rockford, IL 61107

STATE OF ILLINOIS
SUPREME COURT CLERK
SUPREME COURT BUILDING
SPRINGFIELD 62706

September 19, 1990

Ms. Joyce Balzer

1302 Coolidge Place

Rockford, Illinois 61107

THE COURT HAS TODAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 70317 - Joyce Balzer, petitioner, v Donald Meier, et al., respondents

Motion by petitioner, pro se, for leave to supplement the petition for leave to appeal instanter. Motion allowed.

JH:jak

cc: Michael Schuerich

Michael O'Brien